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MOST EFFECTIVE FORMS OF INTERNATIONAL COOPERATION FOR THE PREVENTION AND CONTROL OF ORGANIZED TRANSNATIONAL CRIME AT THE INVESTIGATIVE, PROSECUTORIAL AND JUDICIAL LEVELS

Background document

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INTRODUCTION

1. As organized crime has long since crossed national borders to become a highly transnational phenomenon, the response to it should also be transnational if it is to be at all effective. Although the degree of international cooperation in response to transnational crime has increased significantly in the last 20 years, there are still many gaps in patterns of cooperation that can be exploited by the criminals - especially those who belong to highly sophisticated and adaptable transnational criminal organizations. These organizations pose a formidable threat to States, which can be contained only if those States cooperate even more closely.

2. Against this background, the present report identifies the major forms of international cooperation that have already been developed and suggests ways of further enhancing cooperative strategies and mechanisms. The report focuses on arrangements at the operational level, more than at the policy level. First, though, the rationale for cooperation is defined. This is shown to be both compelling and multifaceted; yet there are still powerful obstacles and inhibitions that stand in the way of cooperation. If these are to be overcome, it is important that certain principles of cooperation be observed. Having identified these principles, the discussion focuses on various kinds of cooperation. Informal modalities of cooperation, such as personnel and information exchanges, as well as various types of assistance in both the investigation and prosecution of transnational organized crime, are examined. Consideration is also given to more formal modalities of cooperation, and particular attention is paid to efforts to bring criminals to justice via the process of extradition and the provision of evidence through mutual assistance. While all these methods of cooperation are important, major initiatives need to be taken at the political level to generate awareness of the threat and of the sustained cooperation necessary to counter it.

I. THE RATIONALE FOR COOPERATION

3. The rationale for international cooperation to deal with transnational criminal organizations is very powerful. These organizations are not only becoming stronger and more diverse but they are engaging more and more frequently in systematic forms of cooperation designed to further their criminal activities, extend the reach of illicit markets and expand their capacity to infiltrate legitimate business. Their enhanced mobility and their capacity to exploit licit commerce for concealment, and to use the global banking system for accumulating, moving and laundering the proceeds of their crimes, make it extremely difficult for any single Government, no matter what means and resources it has at its disposal, to develop an adequate response without some form of international cooperation. Indeed, the inability of any Government acting alone to make major inroads on criminal organizations that operate transnationally is the single most important factor underlying the need for international cooperation. In fact, global conglomerates dealing in illicit activities survive and flourish because unilateral enforcement efforts by a single country generally disable only small segments of such operations.[1] In other words, host nations may be able to do something about the branch office or local franchise but find it much more difficult to reach the corporate headquarters, especially as most transnational criminal organizations operate from a safe haven in home bases in which criminal justice systems are weaker. Moreover, these organizations profit from the lack of homogeneity of national countermeasures and have proved capable of adapting themselves to the different national settings and law enforcement obstacles by choosing the activities they can carry out more easily in different countries and by always being quick to transfer their activities to other countries when national countermeasures become more efficient.

4. Even when efforts are made to compensate for the weaknesses of the domestic system, through extradition and subsequent prosecution in other countries, criminals use nationalism and sovereignty as defensive symbols against extradition efforts. Consequently, extensive cooperation with, and assistance

to, countries that are having the most difficult problems and, consequently, may be used as sanctuaries or safe havens, remain essential.

5. International cooperation is not only an essential condition for controlling transnational crime and dismantling the organizations that engage in it but it is also important as a preventive measure. There must be universal awareness of the fact that no country is immune to the challenges posed by transnational criminal organizations. Even if they are not in the immediate line of fire, as trafficking needs change or new market opportunities arise, particular countries might find themselves involuntarily acting as transit nations or new host nations for criminal organizations. In fact, if transnational criminal organizations find one nation becoming less hospitable as a result of more vigorous and effective suppression activities, some of their members may simply move their base of operations elsewhere. It is essential, therefore, to strengthen the States with weaker criminal justice and law enforcement systems. Indeed, to maximize law enforcement risks for transnational criminal organizations, international cooperation should produce a more resilient and uniform law enforcement environment that makes it much more difficult for them to continue to operate with impunity in certain countries, to infiltrate others by relocating their operations and to move their profits through the global financial system.

6. The challenge posed by transnational organized crime can only be met if law enforcement authorities are able to display the same ingenuity and innovation, organizational flexibility and cooperation that characterize the criminal organizations themselves. They have to be not only as flexible as the organizations they are trying to combat, but as adaptable and sophisticated as well. In particular, to be successful, they will have to be more innovative in their use of existing and new bilateral and multilateral legal mechanisms, and action at the country level will have to be more uniform or homogeneous, so that law enforcement officials can display the same mobility and efficiency as the criminals themselves.[2] Moreover, in addition to the transnationality and adaptability of organized criminal groups, increasing cooperation between them, especially through a growing but still relatively small number of agreements, has highlighted the inadequacies in the fight against organized crime. New agreements and new judicial measures and instruments are therefore needed, which could involve the whole international community.[3]

7. Law enforcement cooperation should endeavour, inter alia, to achieve the following goals:

(a) To identify and immobilize the criminal; this will involve "identifying individuals who engage in criminal activity, finding and arresting them, gathering the evidence necessary to indict and convict them, and finally imprisoning them";[4]

(b) To disrupt the activities of transnational criminal organizations, which entails making it more difficult for these organizations to operate with impunity and to use safe havens: one response to the safe haven problem might be to seek rendition and prosecution in countries where the criminal justice system is more effective;

(c) To deprive the criminal organizations of assets obtained through illicit activities, by means of seizure and forfeiture of assets: this is one of the most important strategies that can be used against transnational organized crime, as it limits their opportunities to reinvest in legitimate business and to engage in bribery and corruption;[5]

(d) To dismantle the criminal organizations themselves: as transnational criminal organizations have a ready source of manpower. Even if a few high-level individual members of the group are incarcerated, there are usually others who can replace them, so unless the organization itself is placed at risk, law enforcement action may simply create a more rapid turnover and greater promotion opportunities within the criminal group.

8. To achieve these strategic goals, cooperation is essential, as evidenced by the recent patterns of cooperation among law enforcement authorities, which have become stronger and more pronounced. Nevertheless, many countries still have a long way to go before they can achieve the kind of comprehensive cooperation necessary to deal with the formidable array of transnational criminal organizations and activities. Countries should base their countermeasures upon effective organizational and management techniques and, like organized crime itself, should take advantage of technological advances as a strategic defence against vulnerability. The development of frameworks are therefore essential for inter-State cooperation aimed at building a strong collaborative global infrastructure, more effective cooperative mechanisms.

II. FACTORS INHIBITING COOPERATION

9. The agenda for international cooperation itself may become more clear if existing obstacles to the establishment of an infrastructure are identified. In fact, in spite of the imperatives for cooperation, criminal law has long been not only a matter of national jurisdiction but also one of the main expressions of national sovereignty - the key assumptions of which are that the State recognizes no higher legal and constitutional authority than itself and has a monopoly on the legitimate use of force. Furthermore, the duty of the State to protect its citizens is generally taken to mean that citizens who transgress should be prosecuted under the State's own law and should not be subject to foreign jurisdiction. Consequently, a State is often reluctant to extradite its own nationals to another jurisdiction even if the other State has good reason to prosecute them. And even if the State is willing to extradite its own citizens for prosecution in another country, this may provoke violent opposition on the part of the transnational criminal organizations in their home base.*

10. The ability of States to cooperate in criminal justice and law enforcement matters depends in part upon the political relations between them. The more difficult the political relationship, the more sensitive such cooperation is likely to be - especially when different ideologies or value systems are in play, or when the levels of respect for human rights and freedoms differ. One of the problems here is that law enforcement cooperation has traditionally been treated as a matter of "minor" policy to be subordinated to the "major" policies associated with diplomatic relations, political and military alignments and security relations. The threat from transnational criminal organizations, however, makes law enforcement cooperation a priority.

11. The diversity of legal systems based on different principles, in which different activities are criminalized, sometimes makes it very difficult for States to cooperate. In fact, the difference between civil law and common law jurisdictions and between the different civil or common law systems can hamper the development of concerted approaches. A good example of this is that many civil law countries have a rule of compulsory prosecution that limits prosecutorial discretion and makes it more difficult to use criminal informants to obtain information on their organizations. Although the practice of using informants and initiating undercover operations has developed in many countries, these approaches - which are crucial to the fight against transnational criminal organizations - still encounter considerable resistance in others. Indeed, differences of attitude and approach and variations in criminal justice cultures remain evident even in regions where there is a high level of political and economic cooperation among States and where there is some progress towards the creation of "common judicial spaces". For example, in spite of the United Nations Convention against Illicit Traffic in Narcotic Drugs

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*This actually happened in one country, where the campaign of violence against extradition mounted by one drug cartel group resulted in a new constitution in which the extradition of nationals was expressly forbidden.

and Psychotropic Substances of 1988 (E/CONF.82/15 and Corr.2) and the steps taken towards political union, the patterns of legislation on drug abuse control differ widely in the States of Western Europe. When countries with different levels of economic development and very different cultural traditions are involved, the variations become even more pronounced, and the difficulties in the way of cooperation even greater. These different legal traditions have very important practical consequences on such issues as the admissibility of evidence.

12. Different countries also have different levels of sensitivity to particular problems. It is no accident, for example, that the United States of America and Italy have developed the most comprehensive legislation against organized crime, as this is something that Italy has had to deal with since the nineteenth century and that has been a problem in the United States since at least the prohibition era. For countries where the problem has not materialized to the same extent, readjusting the criminal justice system to respond to the threat from transnational criminal organizations is rarely a high priority.

13. Also, criminal justice systems have varying levels of effectiveness and efficiency. Even if there is a high level of sensitivity to the threat posed by transnational criminal organizations, it does not necessarily follow that the reaction to it will be sufficiently strong. For many of the countries making the transition to democratic governance and market economies - and certainly for most developing countries - the problem is a shortage of the human and material resources necessary for an effective criminal justice and law enforcement system. What makes this all the more disturbing is that "differences in effectiveness of legal system are exploited by transnational criminals and pose problems and frictions for law enforcement".[6]

14. Therefore, harmonization of national legislation is the premise on which the whole process of coordinating national efforts at least to check, if not to eliminate, the phenomenon of organized transnational crime is based.[7] For this, however, a strong political will is necessary, not only at the legislative level but also at the implementation stage. As a basis for the process of legislative harmonization there is a common perception of organized crime within the international community. A general agreement upon the essential concept and the use in all nations of similar, if not identical, types of criminalization for members of criminal organizations can help slow the spread of organized crime and will facilitate legal cooperation, especially when it is based on the principle of dual criminality.[8]

15. Another pervasive problem for cooperation is what has been termed "institutionalized corruption".[9] Law enforcement agencies can sometimes be reluctant to share information or engage in cooperative ventures with their counterparts in other countries because of the possibility that the information could be passed on to the criminals. As well as undermining the efficacy of law enforcement operations, leaks of this kind could place operatives in danger. When corruption also occurs at the government level, it can do much to undermine the will to respond to transnational criminal organizations - even if there is an acknowledgement of the threat and the capacity to do something about it.

16. A major, but rather sensitive, problem is posed by the fact that in certain circumstances it is not in everyone's interest to cooperate. This is the case when corruption has reached the highest levels of government, as cooperation can undermine government officials or even the Government as a whole. It is also the case with off-shore banking centres that act as tax havens. Not surprisingly, the authorities of these areas, and the banks themselves, are reluctant to provide for disclosure of information. Indeed, in many of these cases there are laws against such disclosure. This is the very antithesis of the transparency that law enforcement authorities need to respond to transnational laundering. Since many of these havens are, however, highly dependent upon their banking systems as major sources of finance and employment, national self-interest works against major changes and the development of sustained cooperation.

17. These problems, the restrictions on cooperation that result, and the frustrations they create for law enforcement may be understandable. They do, however, pose "a basic challenge to the state: how to control growing domains of transnational activities that either ignore or take advantage of national borders when the powers of the state remain powerfully circumscribed by the political, geographical, and legal limitations that attend notions of national sovereignty".[10] This challenge can be met only if the continued preoccupation with the symbolism of maintaining national sovereignty in law enforcement efforts is mitigated by the acknowledgment that sovereignty can be systematically and consistently undermined by transnational criminal organizations. The concomitant is that some nominal sacrifices of sovereignty that may help to make transnational law enforcement more effective are essential to respond to the growing transgressions against it. To relinquish some of the formalities of sovereignty means to restore the rule of law, taking into account existing realities, in order to "nullify the advantages that criminals derive from operating across borders and to reduce, circumvent or transcend the frictions that hamper international law enforcement".[11] This point was made very graphically by the former Minister of Justice of the Netherlands in his comment that the Russian Mafia is too dangerous a foe to allow the rule of law to be hindered by national borders: "The countries of Europe must be prepared to do away with customs and traditions that evolved over the centuries ... defending national sovereignty is a luxury we can no longer afford."[12] The comment is an important one, with a much wider applicability than Europe.

III. FACTORS ENHANCING INTERNATIONAL COOPERATION

18. While increased cooperation is a matter of urgency, it must, wherever possible, be accompanied by an acute awareness of the political and structural constraints faced by many Governments. Voluntary cooperation will generally work better than compulsory cooperation. At the same time, there may be cases, such as the offshore banking havens, where pressure from the international community has to be exerted in order to overcome the vested interest in maintaining the status quo.

19. Cooperation can take place in several different ways and at several levels. It can be informal and formal in nature, and both bilateral and multilateral in scope. Bilateral forms of cooperation undertaken by States with similar preoccupations and approaches tend to have a high payoff. Yet there are occasions, especially involving high-profile bilateral cooperation between unequal powers, when they can become unpopular in the weaker country. In these circumstances, it may be much more expedient politically to opt for a multilateral approach, rather than simply operating on a bilateral basis. Moreover, the various levels of cooperation should be regarded as complementary to one another rather than as alternatives. A "variable geometry" approach to cooperation, based on a thickening web of bilateral linkages complemented by multilateral approaches that provide a framework of principles, has certain advantages, especially if it can be developed in ways that allow it to take on its own dynamism. Incremental forms of cooperation help to build up trust and make it possible to move to more comprehensive activities. To the extent that cooperative ventures are successful, then the inhibitions to further cooperation are likely to be eroded, encouraging new initiatives.

20. International cooperation, although it has various components, needs to be integrated into a holistic approach. The logic of this was recently brought out in the Commission on Crime Prevention and Criminal Justice at its third session, and subsequently in the Economic and Social Council, when the importance was noted of using:

> "Normative and organizational measures that can be applied to every aspect of criminal activity. In other words, there is a need to devise strategies related to the structural characteristics of organized crime which, besides the essential element of having more individuals organized in a group, include the goal of profit-making; the use of violence,

> intimidation and corruption; the hierarchical links or personal relationships that make it possible to closely control the activities of the group; the economic control of whole territories; the laundering of illicit profits in order not only to organize other criminal activities but also to set up legal businesses (with the consequent effect of corrupting them); the great potential expansion beyond national boundaries; and the tendency to organize international operations together with other groups of different nationalities."[13]

In short, effective international cooperation needs to be as comprehensive as possible in order to attack the groups' structures, to disrupt their activities, to seize their assets and to incarcerate their members.

21. In considering issues for international cooperation, the importance of preventive measures must not be overlooked. International cooperation can play a significant role in terms of defensive measures or target hardening. It can help States to reduce the vulnerability of administrative and law enforcement agencies to corruption and to protect financial and commercial institutions against infiltration and ultimate domination by criminal organizations. Assistance with administrative laws and banking regulations, for example, could help to ensure greater transparency in company ownership, better scrutiny of acquisitions and transfers, and higher standards of ethics and accountability in both governmental institutions and the private sector. Such assistance should be aimed at mobilizing the private sector to act voluntarily to make the objectives of transnational criminal organizations more difficult to achieve. Furthermore, the establishment of international databases on national financial legislation and their implementation (namely, control of financial transactions and assets) certainly constitutes an important tool for both the control and the prevention of organized transnational crime.

22. A basic principle of all international cooperation to deal with transnational crime is that it should be compatible with respect for human rights and the protection of individual freedoms. Without this basic safeguard, the measures that are taken could attract criticism and fail to obtain legitimacy - something that transnational criminal organizations would be quick to exploit. If vigorous actions against transnational criminal organizations and the crimes they commit are to be accepted by domestic constituencies, these actions have to take place within a framework of high legal and ethical standards.

23. Cooperation and especially forms of mutual assistance should be sensitive to cultural norms and political sensibilities. In other words, as was noted in the Commission on Crime Prevention and Criminal Justice at its first session, "cooperation should not assume forms that placed the receiving countries in a passive and disadvantaged position. On the contrary, since it was the shared responsibility of all countries, international cooperation against escalating transnational crime should be structured on the basis of true partnership".[14] At the same time, it must be recognized that partnership means that countries receiving mutual assistance also have a responsibility to make good use of it.

24. One of the major objectives of international cooperation must be to create greater harmonization in criminal justice systems, by improving the standards of countries with weaker criminal justice systems in general or by developing national legislation specifically directed against organized crime. It is crucial to eliminate "sanctuary States" and ensure that national legislation against transnational organized crime is as compatible as possible. Complete harmonization is, of course, impossible, for some of the reasons identified above. Yet there is a level of harmonization, perhaps better described as inter-operability, that allows for continued national differences while still achieving the necessary degree of complementarity for effective concerted action against transnational crime. It has been emphasized that "investigation of transnational crime, no less than its prosecution, will likewise involve multiple jurisdictions and cooperation among different governments. To be useful, the products of these investigations should be as nearly interchangeable as possible. Procedures need not necessarily be identical but they should incorporate rules to protect the accused, limit police power, ensure equitable tribunals and provide decent prisons".[15] Growing interchangeability and the capacity to use information

and evidence across national jurisdictions are of major importance in the fight against transnational crime.

25. Effective international cooperation requires speedy exchanges among nations and heightened responsiveness to requests for information or assistance. There are occasions, for example, when criminals are arrested but then allowed to go free because the paperwork from another country has not arrived. A more rapid response is crucial for dealing with urgent situations. Indeed, expediting responses to requests for assistance should be given high priority. Where necessary, technical assistance, especially in the form of computers and data-processing capabilities, could significantly improve the responsiveness to such requests.

26. It is important to build on the work of existing organizations, such as the International Criminal Police Organization (ICPO/Interpol) and others, and to consolidate the very extensive but still ad hoc arrangements that currently exist for cooperation so as to consolidate these activities and achieve more effective and efficient outputs. Cooperative institutions and arrangements already in place include ICPO/Interpol, the Financial Action Task Force on Money-Laundering, set up by the Group of Seven major industrialized countries, the Council of Europe, the European Union, the Schengen Group and the Commission on Crime Prevention and Criminal Justice. Contacts, coordination and cooperation among these bodies should be encouraged. In particular, it is of fundamental importance that all existing technical, bilateral and multilateral activities involving technical cooperation be well focused and that the means for coordinating such activities be studied in order to avoid overlapping.[16]

27. Cooperation should be commensurate with the threat - and the threat is more formidable than is usually realized. In a world in which a growing number of countries are affected by a crisis of governance, the opportunities for transnational crime are ever increasing.[17] Indeed, it is arguable that in the "post-cold-war" era, mutual assistance will take on greater importance, at the same time as military assistance is declining in significance. In these circumstances, Governments should be prepared to allocate significant appropriations for assistance in dealing with transnational crime.

28. Cooperation should not be pursued at the expense of all other goals - and in particular at the expense of the integrity and effectiveness of national investigations. The sharing of information, for example, is usually highly desirable, but when it could undermine national efforts to apprehend a particular criminal or group, withholding it or postponing it to a later stage is the preferable option. Such caveats are a recognition of the fact that cooperation is merely a means - albeit a very important one - rather than an end in itself. And at times, other objectives may override the impulse for cooperation.

29. Cooperation should be multifaceted - and should encompass such activities as extradition and mutual assistance, a willingness to enforce foreign judgements, and a readiness to transfer criminal proceedings and offenders from one jurisdiction to another. In addition, cooperation could be extremely useful in mobilizing both public opinion and the business sector against transnational crime. The media, for example, has enormous potential to expose corruption in government and could be a considerable asset in efforts to achieve greater transparency.

30. Cooperation is not simply a substantive matter but also a procedural one. In this connection, the process of cooperation itself needs to be enhanced. One way of doing this is to assign to a central authority the task of facilitating and coordinating international cooperation efforts, including such matters as extradition requests and the implementation of treaties.[18]

31. Cooperation against transnational organized crime requires the development of particular kinds of investigative and prosecutorial capabilities that are not readily available. One of the main themes of

cooperation, therefore, should be to mobilize, pool and jointly use "available resources, including expertise and facilities such as training centres, and through the transfer of knowledge, information and technology to foster operational compatibility on a global scale".[19]

IV. INFORMAL METHODS OF COOPERATION

32. The detection, investigation, prosecution and adjudication of organized transnational crime are laborious and complex activities because of the involvement of authorities of many countries and of different legal systems, and of the various difficulties of communication across borders. Therefore, the establishment of links at the operational level and direct communication in a more informal fashion can be invaluable in smoothing out difficulties and preventing delays or misunderstandings, provided such informal arrangements do not jeopardize the fundamental rights of those involved in investigations or criminal proceedings.

A. Personnel exchanges

33. One of the most effective ways to enhance the capacity to deal with transnational criminal organizations is to take relatively informal measures that are designed to reinforce the so-called "law enforcement's transnational subculture" based on common functions and objectives: "... it is this transnational identity - based on the notion that a cop is a cop and a criminal is a criminal, no matter what their respective nationalities - that provides the oil and the glue of contemporary international law enforcement."[20] One of the best ways of doing this is through personnel exchange programmes.

34. Although criminal justice attachés at embassies and consulates play an important role in enhancing understanding of their countries' laws and judicial procedures, their work needs to be supplemented by personnel exchange programmes at the level of criminal intelligence and law enforcement operations against transnational criminal organizations. Such programmes could be a very useful means of facilitating effective cooperation in response to transnational crimes.[21] To be really effective, however, international exchanges should be built into the patterns of career advancement in such a way that they become attractive to the most able law enforcement officers. Such schemes would have several advantages. For example:

(a) A systematic personnel exchange programme would be of enormous help in generating trust and building up the necessary contacts to form a network of law enforcement officials able and willing to work together with those from other countries. It is crucial to establish extensive transnational networks that can operate informally as well as formally. Indeed, building up relationships of trust between individuals from national police forces is essential if the kind of loose network structures that characterize the criminal organizations are to be countered by similar structures in law enforcement. It also means that there will be a greater willingness to work together even where there are political and bureaucratic obstacles;

(b) Personnel exchanges would assist in bringing in experts who can provide novel insights into the problem, based on national or ethnic backgrounds and past law enforcement experience. Law enforcement establishments in Western Europe and the United States, for example, could benefit considerably from the incorporation - on a temporary or permanent basis - of law enforcement officials from Hong Kong experienced in dealing with the challenges posed by Chinese Triads. More generally, exchanges would make it easier to infiltrate ethnically based criminal organizations by helping to surmount the barriers of language and ethnicity;

(c) Personnel exchanges would lead not only to a greater willingness to respond positively to requests for assistance, but also to a better understanding of the constraints that affect counterparts in different countries. This in turn could help contribute to a realization that lack of cooperation may be a result of external factors, rather than a lack of desire or will on the part of the national police forces themselves;

(d) It would be extremely useful not only for law enforcement and criminal justice personnel but also for staff of relevant administrative bodies, for example those in the financial sector that are responsible for analysing financial transactions, to take part in these exchanges.[22]

35. There are, of course, some dangers involved, not least of which is the risk of infiltration by foreign law enforcement officers who may have been corrupted by criminal organizations. Such exchanges, therefore, require very careful vetting to ensure the reliability of those involved. So long as these precautions are taken, however, this is a relatively modest step - and it is a case of systematically building on what has already been done in this area - that can have substantial benefits.

B. Sharing and exchange of information

36. One of the most important commodities in the efforts to deal with transnational criminal organization is information. Even at the national level, however, information is all too often jealously guarded, bureaucratically fragmented and treated as a resource in inter-agency power struggles rather than one of the keys to an effective response to transnational organized crime. In recent years, some efforts have been made to go beyond this by setting up national centres responsible for amassing intelligence on drug trafficking and other transnational criminal organizations. The creation of the National Drug Intelligence Center in the United States and the National Criminal Intelligence Service in the United Kingdom of Great Britain and Northern Ireland are good examples of the kind of centralized intelligence organizations that are likely to prove increasingly useful in the struggle against organized crime. Moreover, in certain countries, specialized investigative units dealing with organized crime,[23] such as the Anti-Mafia Investigative Board (Direzione Investigativa Antimafia) in Italy, gather information that is necessary for investigation and prosecution, thus functioning as an intelligence service.

37. Such agencies can provide both up-to-date and analytical assessments of transnational criminal organizations and their activities. By encouraging a better understanding of the "complex combination of activities, people and means" that make up transnational organized crime, they facilitate the exchange of intelligence that is essential for both day-to-day policy-making and strategic planning.[24] To this end, important categories of information need to be further developed, analysed and shared. These include the profile of organizations and their power structures, evidence about the leadership, the extent to which the organization has infiltrated legitimate business, the nature of the interrelations between the street and intermediary levels on the one side and the main organization on the other, and the strategic alliances that are developing among organizations.* Upgrading the quality of organization analyses at the national level provides a much better basis for exchange of information at the international level.

38. Although any scheme for intelligence sharing has to combine the transmission of sensitive information with the need for security, both in transmission and with the recipient, the provision of real time information can be very helpful in apprehending those engaged in transnational crime.[25] This was

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*A useful assessment of information needs can be found in the discussion guide for the Ninth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, under topic 2 (A/CONF.169/PM.1 and corr.1).

reflected in March 1993, when Germany and the Russian Federation signed a protocol establishing rules for cooperation. In a different context, an encrypted communication system has been set up between the Federal Bureau of Investigation (FBI) in the United States and the Anti-Mafia Investigative Board in Italy, with routine exchanges which include:

(a) Information on those who have committed crimes and might be moving into one's jurisdiction. This is provided, as a rule, in the red notices supplied by ICPO/Interpol;

(b) Information on stolen art objects and antiquities that is passed on in an effort to prevent the illegal sale of movable cultural property;

(c) Information that can be used in passport and travel controls and that identifies vehicles and vessels used in transnational criminal activity;

(d) Information on new trafficking patterns and new trends in drug abuse (for example, the use of methcathinone);

(e) Information on money-laundering and financial transactions;

(f) Information on methods of concealment - as currently provided by the Customs Co-operation Council.

39. Such exchanges are designed to share information on who the criminals are, where they are, what they are doing, and how they are doing it, with continuous improvements at both the operational and the strategic levels, in order to identify the major transnational players and their impending operations. In considering ways of further improving the exchange of information, however, it is important to ensure that good use is made of existing data nets, such as that provided by ICPO/Interpol, which has created a database on enterprises and groups of persons engaged in illegal profit-making activities. Moreover, the range of countries that are provided with the information should be extended - although this also requires that the relevant authorities make good use of such information, protecting it from unauthorized leaks. There is an inescapable trade-off between the need for security and the need to share information. This difficulty is compounded by the fact that, with the end of the cold war, a number of national intelligence services have become increasingly involved in the struggle against transnational organized crime and drug-trafficking. This poses problems regarding the sharing of information even with law enforcement agencies at the national level, let alone with other nations. An additional complication is that a number of countries have adopted legislation that requires data to be protected in order to guarantee the privacy of their citizens.

40. Efforts should nevertheless be pursued to develop a more coordinated and extensive sharing of information based on the upgrading of national efforts, the development of interfaces with relevant organizations and the provision of information and computer technology and assistance to developing countries[26] and countries in transition. The increase of fax capabilities means that it is possible to have extensive "hot line" type capabilities at a relatively modest cost. The other requirement is that national contact points should be designated, which would be computerized and would provide continuous liaison and rapid responses both to requests for and receipt of information.

41. As for the researching and passing on of information, at the international level, on organized crime and on legislative and organizational regulations set up in individual countries, an important role could be played by the United Nations,[27] provided that there is appropriate input and feedback, on a continuing basis, from all countries concerned, as well as a minimum of resources to process and disseminate relevant information.

C. Bilateral and multilateral task forces

42. Other types of initiatives that have yielded good results are the multinational task forces.[28] Increasing both the scope and the number of joint operations against transnational criminal organizations could help to disrupt their activities and result in major seizures of their assets. In certain cases it could be necessary for a specific country to take the lead, as the United States Drug Enforcement Administration did with Operation "Green Ice", an undercover money-laundering operation that led to numerous arrests in 1992 in Canada, Italy, Spain, the United Kingdom and the United States. Such operations are able to attack the organizational structures underlying transnational crime and are generally extremely disruptive. They can also yield new information on the activities of the criminal organizations. In addition, they help to establish habits of cooperation that can be consolidated and extended in the future. Although such operations are generally easier to implement on a bilateral rather than a multilateral basis, as the linkages among transnational criminal organizations become more pronounced, multilateral operations will become even more important. National participants can provide complementary skills and expertise in ways that have a multiplier effect on law enforcement. This requires a certain minimum level of skill and expertise from all the participants. In some cases, however, this expertise is lacking. It is therefore crucial to enhance the capabilities of States with weaker criminal justice and law enforcement systems, by means of proper training and assistance programmes.

D. Strengthening law enforcement capabilities

43. The challenge posed by transnational organized crime is a formidable one, and one that most States are not equipped to meet. One of the crucial tasks for the international community, therefore, is to ensure that law enforcement is equal to the challenge it faces, especially in the developing and transition countries. In fact:

> "A highly qualified, interdependent and coordinated response is an essential ingredient of more effective action. This will involve a considerable human resource investment in order to provide or refine cross-sectoral professional training of high calibre, using the normative yardstick of international standards. The upgrading of specialized technical skills is necessary, together with development of an effective individual and collective operational capacity at the field level. It requires personnel conversant with organized crime techniques, as well as with substantive and procedural law of domestic and other relevant jurisdictions. It also requires familiarity with the provisions of existing international conventions, standards and norms, agreements and other arrangements (including those related to seizure of the proceeds of crime, mutual legal assistance, extradition, prisoner transfer, transfer of criminal proceedings, and procedures such as controlled delivery). These are all designed to enable better collaborative transnational action."[29]

44. There are several schemes already in place that are designed to bring the level of criminal justice systems up to a point at which they can cope more effectively with all forms of crime, including transnational organized crime. These schemes include arrangements initiated or supported by individual countries, those that are carried out on a regional or subregional basis and those under the rubric of international agencies and organizations.*

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*One example of training provided by a particular country is the International Criminal Investigative Training Programme, established by the United States Congress in 1986 to enhance the capacity for investigations in democracies in Latin America and the Caribbean. This scheme is under the authority of the Deputy Attorney General but is funded by the State Department. The scheme has obtained considerable support from the Department of Justice, and the FBI which is not only providing

45. Assistance should be regarded as a matter of self-interest and not altruism: the developed countries themselves will eventually benefit if they provide the means of empowering developing countries to respond to problems of organized and transnational crime in all its forms. Although the specific needs of the countries requiring assistance must be the final determinants of the shape of assistance packages, assistance is generally needed in four main areas: establishing the legal framework, training personnel to implement it, providing the technology that is necessary to manage it effectively, and providing support to protect the criminal justice system and its members against corruption, intimidation and violence.*

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assistance with training programmes but is also sharing its resources, including facilities at the FBI Academy at Quantico. The programme includes academic instruction for criminal justice personnel and is designed to improve the investigative, administrative and management abilities of law enforcement agencies. Although its main thrust is assistance for police agencies, it also works with judges and prosecutors. In addition, specialized training has been provided under the Colombian Judicial Protection Programme (which began in 1989 under counter-narcotics legislation) and involves protection strategies for judges and others who are under threat. The scheme not only enhances the criminal justice and law enforcement capacity of States in the region but also contributes to the creation of law enforcement networks and the promotion of regional cooperation (Roger Yochelson, "International police training", in Law Enforcement Bulletin, vol. 62, No. 4 (April 1993), pp. 6-11). Examples of assistance provided at the regional or subregional level include the Demosthenes Programme carried out by the Council of Europe and the assistance provided to the Baltic States by the Nordic Council, which has established liaison offices in Estonia, Latvia and Lithuania, as well as at St. Petersburg, and provides assistance with border controls and crime prevention (Christopher J Ulrich, "The growth of crime in Russia and the Baltic region", RFE/RL Research Report, vol. 3, No. 23 (10 June 1994), pp. 24-32). At the global level, both the United Nations International Drug Control Programme and the Crime Prevention and Criminal Justice Branch of the United Nations Secretariat provide practical assistance through institution building and human resource development by means of training courses and seminars, and through the coordination of technical cooperation efforts. In particular, the Branch carries out technical cooperation activities, mainly in the following areas: facilitating the exchange of information (e.g. clearing-house functions), contributing to training activities organized by other entities, such as intergovernmental or non-governmental organizations; organizing training on specific issues, at the request of a Member State or an organization; preparing training materials; preparing comprehensive technical assistance projects; and contributing to broader operational activities implemented by the United Nations, such as peace-keeping and peace-building operations. The Branch also provides advisory services for law reform, the drafting of new legislation, improving the administration of criminal justice and setting up crime prevention policies (see the report of the Secretary-General on technical cooperation and advisory services of the United Nations crime prevention and criminal justice programme, including appropriate mechanisms for the mobilization of resources (E/CN.15/1994/6). In connection with drug-related issues, similar activities are carried out, in cooperation with the Branch, by the United Nations International Drug Control Programme, for example in the Expert Working Group on Mutual Legal Assistance and Related International Confiscation, the Interregional Investigation Techniques Course on Money-Laundering, and advisory services for the implementation of the United Nations Vienna Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988. (See the note by the Secretariat on the coordination of drug-related activities and cooperation between the United Nations International Drug Control Programme and the Crime Prevention and Criminal Justice Branch of the Secretariat (E/CN.7/1994/7).)

*Regarding the need to reform existing legislation, develop new legal frameworks and train law enforcement personnel in order to achieve effective international cooperation, see the report of the Secretary-General on the status of preparations for the World Ministerial Conference on Organized Transnational Crime (E/CN.15/1994/4), para. 25.

46. A viable legal framework can be established in countries that do not have a penal system suitable for fighting organized crime at either the national or the transnational level through assistance in the drafting of new laws. Technical assistance in drafting, revising and implementing relevant legislation is crucial, in particular in terms of the provision of available options and models, which could be adapted to the specific legal, political, cultural, economic and social contexts of each country.

47. In order to implement the framework it is necessary to have trained personnel. This need can be met through increased resources for training courses for law enforcement officials at the regional and interregional levels. In addition, the provision of special courses for personnel involved in detecting, investigating, prosecuting and adjudicating cases involving transnational organized crime (namely the police, investigating judges and magistrates, and technical and investigative support staff) is essential. One of the aims should be to produce law enforcement personnel able to form specialized investigative units that are able to develop information-gathering techniques such as the interception of communications, controlled deliveries, and cooperating witnesses. Another priority area should be training programmes designed to help law enforcement personnel to "follow the money trail" and develop ways of confiscating the proceeds of crime, since the laundering and use of proceeds of crime are among the primary objectives of organized crime and international cooperation to counter these activities is essential.[30] In addition, training programmes to deal with new threats, such as the smuggling of radioactive materials, would seem to be crucial. Finally, where necessary, the capability to prevent, detect, and prosecute instances of corruption by public officials and members of the criminal justice system itself should be developed. Anti-corruption training courses should emphasize prevention and education, as well as control measures.

48. It is also important that developing countries and countries in transition should receive assistance in developing or operating the technological capabilities that permit them to use and share information effectively. As transnational criminal organizations make full use of technology, it is essential that law enforcement agencies should also have access to computerized systems and, in some cases, other high-technology devices, including those necessary to detect radioactive material. Greater computer awareness is essential not only for the exploitation of data but also because of the growth of computer-related crimes and because money-laundering transactions and other economic crimes are carried out through sophisticated computer operations.

49. An efficient and effective criminal justice and law enforcement system should take special measures to protect itself against corruption, intimidation and violence. Ensuring the implementation of national codes of conduct for public officials is certainly helpful, as would be the designation of specific units at the national level charged with investigating corruption.* Transnational criminal organizations have large resources available for bribery and corruption and the temptations are particularly great for police officers, who often barely earn a subsistence wage.

50. Measures should also be initiated to protect the criminal justice system as a whole, that is, the persons, institutions and structures involved in the mission of investigating, charging and adjudicating. Indeed, the importance of protecting both prosecutors and cooperative witnesses from coercion and violence by transnational criminal organizations is difficult to overestimate. Consequently, it is essential

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*The Code of Conduct for Law Enforcement Officials, adopted by the General Assembly in its resolution 34/169, provides in its article 7 that "Law enforcement officials shall not commit any act of corruption. They shall also rigorously oppose and combat all such acts". See also the special double issue of the International Review of Criminal Policy, Nos. 41 and 42 (1993) (United Nations publication, Sales No. E.93.IV.4), devoted to practical measures against corruption.

to "create disincentives to attempted interference ... by minimizing the results of any interference and by maximizing the costs to the criminal and the difficulty involved in any such attempt".[31]

51. The results of interference can be minimized through arrangements that make individual officials less attractive targets for bribery or intimidation. For example, for police and prosecutors, task forces and collegial arrangements give the investigation greater resilience and mean that, even if one or more individuals are killed, action can still be taken against the criminal organization; for judges, a sentencing regime in which there are clear and fixed guidelines limits discretion and makes them less susceptible to bribery and intimidation; juries are less vulnerable to "fixing" if they operate according to majority verdict rather than on the unanimity principle; witnesses are less likely to be targeted to the extent that a case can be made on alternative methods of proof, obtained, for example, by electronic surveillance, physical surveillance and seizures of documents and other incriminating matter.

52. In addition, steps can be taken to make it more difficult for criminals to use violence, intimidation or corruption against either witnesses or members of the criminal justice system. This can be done by moving the trial to another area where protection schemes are more effective, or through cooperation in the international relocation of witnesses and the establishment of new identities that would make it difficult for the criminal organizations to find them and seek retribution.

53. With regard to international relocation, it will be necessary to create the equivalent of the sanctuaries that the transnational criminal organizations themselves use so effectively. There might be a problem in terms of determining how the financial burden of such a scheme is to be shared; the possible reluctance of some witnesses to move to another country could also cause difficulty. The former problem could be overcome through the establishment of an international fund to provide for relocation of witnesses and in some cases for judges and jurors. Moreover, the principle could be established that relocation must involve a net improvement in the standard of living for the witness, which could help to overcome the latter difficulty and in some cases might even encourage witnesses to testify. This implies, however, that there must be a willingness on the part of the Governments involved to facilitate immigration and to share the responsibility for relocation and for any attendant matters.

54. Together, these measures can contribute to the creation of effective and viable criminal justice systems, which will be better equipped to withstand the assault of transnational criminal organizations and to challenge their determination to maintain safe havens.

V. FORMAL COOPERATIVE ARRANGEMENTS

55. In addition to the relatively informal methods of cooperation outlined above, there are also more formal arrangements in relation to the apprehension of fugitives and the provision of information for prosecution. In particular, national and international efforts to achieve more effective strategies to deal with transnational crime focus, inter alia, on cooperation through extradition, mutual legal assistance, enforcement of foreign judgements and transfer of criminal proceedings and offenders.[32] The United Nations model treaties could be very useful to Member States in their efforts to combat crime at the national, regional and international levels.[33]

A. Facilitating extradition

56. Extradition is one of the most important areas for international cooperation. It may, however, touch a sensitive chord in the matter of sovereignty, and in certain cases it could be politically controversial; there may also be some weaknesses in current practices and procedures. For example, the civil law

tradition that underpins the legal systems of many countries forbids extradition of their citizens to other States (although they are able to prosecute citizens for crimes committed elsewhere). Furthermore, even if there is a treaty on extradition, this may not be implemented in particular instances because it does not cover a particular offence, as most treaties usually include the "dual criminality" and the "reciprocity" principles. Yet another problem is that countries may sometimes interpret the political offence exception clause in ways that allow them to refuse extradition without outright rejection of the request.[34]

57. In the face of such weaknesses, countries have opted for other alternatives, such as asserting extraterritorial jurisdiction, for example, in which a country authorizes its law enforcement officials to enter another State and seize wanted criminals. This option, however, is unpopular and usually leads to controversy instead of furthering cooperation. Two somewhat less unpalatable alternatives are: informal assistance, where the offender is expelled from the country rather than formally extradited; and informal circumvention where the target criminal in one country is lured into the territory of the country trying to bring him or her to justice. Ultimately, though, these are only palliatives that do not solve the fundamental problems, while they also raise a number of issues regarding their compatibility with international law.

58. Extradition is important in denying sanctuary to criminals and in compensating for the uneven development of criminal justice systems. Given its importance, therefore, serious consideration needs to be given to making the process much smoother and making countries more receptive to requests. One way of doing this is through the creation of greater inter-operability and harmonization among criminal justice systems. This would make it far easier to establish dual criminality. The introduction of conspiracy crimes in countries where the category does not exist would also be an important step in this direction.

59. In a sense, this would make it easier to meet the existing requirements. An alternative approach, however, is to ease these requirements. In particular, consideration should be given to reassessing the principle of reciprocity and the requirements on dual criminality and speciality. A more stringent approach could also be taken, before the political offence exception is brought into play, while a more permissive policy could be adopted towards the extradition of nationals. The political offence exception, in particular, should not be a bar to extradition for involvement in transnational organized crime.[35]

60. A further change that would help to make extradition more effective would be to improve upon existing procedures to ensure that, in cases where it is permissible, extradition is effected without undue delay. This could be done by establishing designated central authorities to process requests for mutual assistance in criminal matters and extradition. In this connection, the Council of Europe has established procedures that have gone a long ways towards reducing the difficulties associated with the technical requirements for extradition.[36]

61. Another improvement would be for countries to extend cooperation through new extradition treaties, as part of multilateral conventions, regional treaties or bilateral agreements. The Model Treaty on Extradition (General Assembly resolution 45/116, annex), which has received the necessary universal consensus of the international community, can serve as a basis for negotiations. The model is broad in scope and involves the agreement to extradite any person who is wanted in the requesting State for prosecution for an extraditable offence (namely an offence that is punishable under the laws of both parties by imprisonment for at least a year). Although the Model Treaty allows for optional refusal if the person is a national, the requested State has an obligation - if asked - to submit the case to its own authorities to consider prosecuting the person for the offence for which extradition was requested. The Model Treaty also has provisions related to procedures, which emphasize the need for specific channels of communication and clarify the documentation requirements. Application is allowed for provisional

arrest where this is a matter of urgency and a formal request is pending. Significantly, the Model Treaty also contains provisions for the surrender of property acquired as a result of the offence.

62. The possibility of using transfer of proceedings, for which another model treaty (General Assembly resolution 45/118, annex) has been drawn up, as an alternative when extradition is not possible, is an attractive one. The Convention on the Transfer of Proceedings in Criminal Matters,[37] drawn up within the framework of the Council of Europe, may also be useful in cases in which extradition appears to be unsuitable.

63. Widespread reliance on extradition treaties would not, however, solve all the problems associated with the many issues related to extradition. There may, in fact, be an irreducible minimum of cases that would remain both difficult and extremely controversial.* Nevertheless, the steps outlined would certainly increase the capacity of Governments to bring to justice members of transnational criminal organizations.

B. Encouraging mutual assistance

64. Mutual assistance, like extradition, falls under the heading of international cooperation, which involves assistance in another country's penal processes, usually within a treaty framework. While extradition is concerned with rendition of offenders, mutual assistance deals especially with various forms of cooperation at the investigative stage, in order to collect evidence.

65. Obtaining evidence and witnesses from another country in ways that can be used in one's own courts is crucial at the prosecutorial level to deal with transnational organized crime. Yet it is also highly dependent upon legal formalities, offering little latitude for informal understandings and tacit cooperation, as "differences between national law enforcement systems - in particular between the adversarial, common law system of the United States and the inquisitorial, civil law system found in much of Europe and Latin America - generate confusions, misunderstandings and tensions".[38]

66. Mutual assistance treaties represent the primary response to this and are designed to facilitate the collection of evidence from foreign jurisdictions in a form admissible in one's own courts.[39] They are an attempt to reduce the frictions and obstacles to international evidence gathering, and contribute to the gradual homogenization of criminal procedures.[40] Moreover, although they still have limitations, such treaties are far superior to "letters rogatory", which tend to be very slow, and "have proven ill-suited to the increasingly complex and voluminous needs of modern international law enforcement methods".[41] Mutual assistance has done much to fill the gap.

67. In fact, the inroads made into transnational criminal organizations through the use of mutual assistance treaties have been very considerable. For example, the United States treaty with Switzerland signed in 1977 has had significant results in providing information related to drug trafficking and money-laundering. Switzerland has provided evidence admissible in United States courts and has even agreed to make the provision of assistance obligatory in organized crime cases, even where the alleged offences did not meet the requirement of dual criminality. Although there were initial problems, these were gradually overcome - especially after Switzerland in 1989 passed legislation making money-laundering a criminal activity. Thus, in April 1994, Swiss authorities seized 150 million dollars from

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*See, for example, "La batalla de Montevideo", El País, 26 August 1994. Two persons died and seventy-five were wounded as a result of a violent protest against the extradition from Uruguay to Spain of three fugitives.

bank accounts in Zurich that had accumulated since the 1970s and was believed to be the proceeds of drug trafficking. The accounts, belonging to two Colombian drug traffickers who had been indicted by a Miami grand jury, were seized as a result of a request by the United States under the treaty.[42]

68. Such treaties, as an instrument of international cooperation, have gradually become more innovative and extensive. For example, the treaty between the United States and Italy, which came into force in 1985, includes an "international subpoena", whereby one State can request the other to compel a person to appear and testify in the requesting State, as well as a provision authorizing the immobilization of assets in the requested State and their forfeiture to the requesting State. The treaty between the United States, The United Kingdom and the Cayman Islands includes provision of documents, location of persons, transfer of persons in custody to give testimony, implementation of requests for search and seizure, and assistance in the freezing and forfeiture of assets. The treaty between Thailand and the United States is even more far-reaching. For instance, "no requirement of dual criminality is imposed on requests for assistance, thereby permitting Thai assistance in drug conspiracy cases despite the lack of an exact counterpart in Thai law, and authorizing US assistance in violations of Thai currency control laws for which dual criminality might not be found in US law".[43]

69. It is clear, even from these few examples, that such treaties have been one of the successes of international law enforcement cooperation. They could, indeed, be used even more extensively. The Model Treaty on Mutual Assistance in Criminal Matters (General Assembly resolution 45/117, annex) provides an important basis for further development of such treaties. The Model Treaty has a broad scope and suggests, in article 1, paragraph 1, that States "afford to each other the widest possible measure of mutual assistance in investigations or court proceedings". This includes the taking of evidence, assistance in making detained persons available to assist in investigations, the execution of searches and seizures, and the provision of information and evidentiary items. Although safeguards are also built in to allow refusal, the treaty makes it clear, in article 4, paragraph 2, that assistance "shall not be refused solely on the ground of secrecy of banks and similar financial institutions".

70. Once again there is a provision for the designation of authorities to receive requests, which are to be promptly executed and kept confidential. Attached to the Model Treaty is the Optional Protocol regarding assistance in forfeiture of the proceeds of crime, which could be particularly attractive if the states involved reach an agreement to dispose of the proceeds among themselves, as an incentive to cooperation.

71. To have maximum effectiveness, these model treaties - like other bilateral and regional treaties or conventions such as those drawn up by the Council of Europe[44] - have to be supported by legislation at the national level, which should be as streamlined as possible, both as to substantive law and as to procedural matters. They should also be implemented efficiently, using standard request forms and going through the designated authorities. In addition, they would need to be reviewed periodically, to encompass new forms of criminality, such as computer-related crimes.

72. In order to assist Member States in such endeavours, the Crime Prevention and Criminal Justice Branch of the United Nations Secretariat is preparing two manuals providing guidelines on how to implement the Model Treaty on Extradition and the Model Treaty on Mutual Assistance in Criminal Matters, drawing on current experience and practice. Moreover, assistance has been provided by the Branch to the Executive Secretariat of the Economic Community of West African States (ECOWAS) in the elaboration of a new Convention on Mutual Assistance in Criminal Matters, based on the Model Treaty. The Convention was adopted by the Heads of States and Government of ECOWAS at their annual summit, held at Dakar on 29 July 1992. The Branch also provided expertise to ECOWAS in the preparation of an additional draft convention on extradition, again based on the Model Treaty on Extradition.[45]

VI. CONCLUSIONS

73. Although progress has been made towards achieving the level of cooperation that is necessary to respond to transnational criminal organizations, much remains to be done. Ultimately, however, this depends upon the will of Governments to allocate both human and financial resources to the efforts to control and prevent transnational organized crime. This in turn requires that there be a recognition of the threat throughout national Governments, and not just in ministries of justice or of the interior. It might be advisable to consider whether international conferences on the issue of transnational organized crime and its implications should be held periodically, in order to establish and update goals and benchmarks and systematically assess the extent to which they have been achieved. Annual international meetings, both at the regional and subregional levels, of heads of national law enforcement agencies responsible for preventing and controlling organized and transnational crime could be another suitable setting in which to identify proper countermeasures to be implemented at the national level.

74. These meetings would not only provide an added impetus for better cooperation, but they could also assist in making public opinion more sensitive to the threat of transnational organized crime and in mobilizing the private sector to take protective measures against it, especially through the adoption of measures to achieve greater transparency. Furthermore, they would offer opportunities to refine the agenda of cooperation, both from the substantial and the procedural points of view, for consistent review by the Commission on Crime Prevention and Criminal Justice.

75. The fight against organized transnational crime, whose activities are becoming more and more internationally widespread, calls for the use of modern, flexible and effective countermeasures on an international scale. The main issue, however, is the urgent need to implement such measures, as no effective results can be obtained from attempts to curb organized transnational crime when they are neither timely nor comprehensive. There should therefore be a widespread awareness at the political level of the fact that this struggle is a matter of "high priority" on the international agenda.

76. What emerges clearly, is the urgent need for strengthened international cooperation with the main focus on the following areas:

(a) Harmonization of legislative and other countermeasures;

(b) Training and exchange of law enforcement and criminal justice personnel;

(c) Information-sharing among relevant agencies;

(d) Joint force operations or task forces;

(e) Protection of witnesses, investigators and judges;

(f) Elaboration of new measures and updating of existing ones, on the basis of a periodic assessment of results achieved;

(g) Technical cooperation and assistance in drawing up such countermeasures;

(h) Clear identification of coordinating authorities in the individual countries;

(i) Measures to encourage the adoption and improve the implementation of existing cooperation arrangements (for example, conventions and model treaties on extradition, mutual assistance and transfer of proceedings);

(j) Effective coordination of activities at the bilateral, regional and multilateral levels.

Notes

[1]Malcolm Anderson, Policing the World: Interpol and the Politics of International Police Cooperation (Oxford, Clarendon Press, 1989), p. 26.

[2]Bruce Zagaris and Sheila Castilla, Implementation of a Worldwide Anti-Money Laundering System: Constructing an International Financial Regime (Washington, Police Executive Research Forum, July 1993), p. 62.

[3]See Economic and Social Council resolution 1994/12, annex, para. 38.

[4]Ethan A. Nadelmann, Cops Across Borders (University Park, Pennsylvania, Pennsylvania State University Press, 1993), p. 4.

[5]Discussion document on the World Ministerial Conference on Organized Transnational Crime (Economic and Social Council resolution 1994/12, annex), paras. 17-18.

[6]Nadelmann, op. cit., p. 5.

[7]Recommendations of the Ad Hoc Expert Group Meeting on Strategies to Deal with Transnational Crime, held at Smolenice from 27 to 31 May 1991 (Economic and Social Council resolution 1992/23, annex I), subparas. 7 (a) and 7 (b).

[8]Discussion document on the World Ministerial Conference on Organized Transnational Crime (Economic and Social Council resolution 1994/12, annex), paras. 8 and 13.

[9]Nadelmann, op. cit., pp. 251-312.

[10]Ibid., p. xiv.

[11]Ibid., p. 6.

[12]"Dutch see Soviet Mafia casting shadow across Europe", Reuters, 20 April 1994.

[13]Discussion document on the World Ministerial Conference on Organized Transnational Crime (Economic and Social Council resolution 1994/12, annex), para. 9.

[14]See Official Records of the Economic and Social Council, 1992, Supplement No. 11 (E/1992/30), chap. III, para. 62.

[15]Testimony of Philip B. Heymann, Deputy Attorney General to the Foreign Affairs Committee, United States House of Representatives, September 14 1993, p. 3.

[16]Discussion document on the World Ministerial Conference on Organized Transnational Crime (Economic and Social Council resolution 1994/12, annex), para. 34.

[17]Roy Godson and William J. Olson, International Organized Crime: Emerging Threat to US Security (Washington, National Strategy Information Center, 1993).

[18]Recommendations of the Ad Hoc Expert Group Meeting on Strategies to Deal with Transnational Crime ... (Economic and Social Council resolution 1992/23, annex I), subpara. 7 (c).

[19]Discussion guide for the Ninth United Nations Congress on the Prevention of Crime and the Treatment of Offenders (A/CONF.169/PM.1 and Corr.1), para. 43.

[20]Nadelmann, op. cit., p. 468.

[21]Recommendations of the Ad Hoc Expert Group Meeting on Strategies to Deal with Transnational Crime ... (Economic and Social Council resolution 1992/23, annex I), subpara. 15 (d).

[22]Discussion document on the World Ministerial Conference on Organized Transnational Crime (Economic and Social Council resolution 1994/12, annex), para. 29.

[23]Ibid., para. 21.

[24]Ibid., para. 20.

[25]Recommendations of the Ad Hoc Expert Group Meeting on Strategies to Deal with Transnational Crime ... (Economic and Social Council resolution 1992/23, annex I), subparas. 7 (g) and 7 (o).

[26]Ibid., subparas. 7 (g), 7 (p) and 15 (f).

[27]Discussion document on the World Ministerial Conference on Organized Transnational Crime (Economic and Social Council resolution 1994/12, annex), para. 30.

[28]Recommendations of the Ad Hoc Expert Group Meeting on Strategies to Deal with Transnational Crime ... (Economic and Social Council resolution 1992/23, annex I), subpara. 7 (g).

[29]Discussion guide for the Ninth United Nations Congress on the Prevention of Crime and the Treatment of Offenders (A/CONF.169/PM.1 and Corr.1), para. 44.

[30]See the report of the Secretary-General on the status of preparation for the World Ministerial Conference on Organized Transnational Crime (E/CN.15/1994/4), para. 23.

[31]Conclusions and recommendations of the meeting of the Ad Hoc Expert Group on Managing the Risk of Violence in a Criminal Justice System: a Framework of Analysis, held at Chicago, United States of America, from 18 to 20 August 1993 (E/CN.15/1994/4/Add.3, annex), para. 7.

[32]Recommendations of the Ad Hoc Expert Group Meeting on Strategies to Deal with Transnational Crime ... (Economic and Social Council resolution 1992/23, annex I), subpara. 7 (c).

[33]Report on the meeting of the Ad Hoc Expert Group on Implementing Legislation to Foster Reliance on Model Treaties, held at Vienna from 18 to 21 October 1993 (see E/CN.15/1994/4/Add.1, annex), sect. II, paras. 9-26.

[34]Richard A. Martin, "Problems in international law enforcement", Fordham International Law Journal, vol. 14, No. 3 (1990-1991), pp. 519-539.

[35]Recommendations of the Ad Hoc Expert Group Meeting on Strategies to Deal with Transnational Crime ... (Economic and Social Council resolution 1992/23, annex I), subpara. 7 (e).

[36]See European Convention on Extradition (European Treaty Series, No. 24) and its First and Second Additional Protocols (European Treaty Series, Nos. 86 and 89).

[37]"European Convention on the Transfer of Proceedings in Criminal Matters" (European Treaty Series, No. 73).

[38]Nadelmann, op. cit., p. 313.

[39]Ibid., p. 14.

[40]Ibid., p. 317.

[41]Ibid., p. 319.

[42]"US-Swiss MLAT yields $150 million seizure in Swiss bank", Money Laundering Alert, vol. 5, No. 8 (May 1994), p. 3.

[43]Nadelmann, op. cit., p. 377.

[44]For example, the European Convention on Mutual Assistance in Criminal Matters and its additional protocol (European Treaty Series, Nos. 30 and 99); the European Convention on the Supervision of Conditionally Sentenced or Conditionally Released Offenders (European Treaty Series, No. 51); the European Convention on the International Validity of Criminal Judgments (European Treaty Series, No. 70); and the European Convention on the Transfer of Sentenced Persons, on 21 March 1983 (European Treaty Series, No. 112).

[45]Report of the Secretary-General on Technical cooperation and advisory services of the United Nations crime prevention and criminal justice programme, including appropriate mechanisms for the mobilization of resources (E/CN.15/1994/6), paras. 21 and 22.

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APPROPRIATE MODALITIES AND GUIDELINES FOR THE PREVENTION AND CONTROL OF ORGANIZED TRANSNATIONAL CRIME AT THE REGIONAL AND INTERNATIONAL LEVELS

Background document

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INTRODUCTION

1. Pursuant to General Assembly resolution 45/108, the Ministerial Meeting on the Creation of an Effective United Nations Crime Prevention and Criminal Justice Programme was held at Versailles from 21 to 23 November 1991. The Meeting spearheaded the integration and consolidation of efforts by the international community to prevent and combat transnational crime, as well as the strengthening of regional and international cooperation in combating all forms of crime. The Meeting was also the culmination of an intergovernmental review that had begun in 1985, aimed at strengthening the United Nations crime prevention and criminal justice programme and rendering it more responsive to the priority needs of its global constituency.

2. The World Ministerial Conference on Organized Transnational Crime will be meeting exactly three years later, at Naples, setting a new landmark in the fight against transnational crime. Its agenda bears witness to the growing concern of the international community about the threat posed by the increasing dimensions of organized transnational crime and its determination to act jointly at the highest level in order to devise viable and effective defence mechanisms.

3. The two meetings are linked by more than the coincidence of dates. In fact, the World Ministerial Conference would not have been possible if the meeting at Versailles had not set precise goals and priorities for the United Nations crime prevention and criminal justice programme, particularly in terms of international cooperation and efforts to prevent and combat transnational crime. In the three intervening years, the message conveyed by the international community at Versailles has been further elaborated and amplified through the combined action of the Commission on Crime Prevention and Criminal Justice, the Economic and Social Council and the General Assembly.

4. The Ministers gathered at Versailles stressed the need for the growing internationalization of crime to generate new and commensurate responses. The incidence and scope of transnational crime was going to increase further in the coming years unless Member States were put in a position to enact suitable preventive and control strategies. International cooperation represented the main strategy against transnational crime. Most problems arising in collecting evidence, extraditing offenders and solving conflicts of jurisdiction, which, in the past, had traditionally weakened inter-State fight against crime, could be eased through mutual assistance and cooperation.

5. In the statement of principles and programme of action of the United Nations crime prevention and criminal justice programme (General Assembly resolution 46/152, annex), the participants declared their determination to translate their political will into concrete action, inter alia, by establishing a framework for inter-State cooperation and coordination to respond to the serious new forms and transnational aspects and dimensions of crime. It was emphasized that one of the big challenges confronting the international community was to match any increases in the capacity and capabilities of perpetrators of crime with similar increases in the capacity and capabilities of law enforcement and criminal justice authorities. Less stringent border controls, designed to facilitate legitimate trade and development, were being exploited by organized crime, and the increased free movement of people accompanying democracy was creating new opportunities for crime. In order to combat the new developments, additional resources needed to be made available to developing countries and countries in which democracy was beginning to emerge. The role of the United Nations as the focal point for coordinating international efforts, setting up projects and acting as a clearing-house to match needs and resources, was acknowledged at the Versailles Meeting.

6. This challenge continues to occupy the international community today. It has become more daunting because of the rapid expansion and increasing sophistication of organized transnational crime. Cooperation at every level is urgently needed if the challenge is to be met.

7. The present report contains an overview of existing modalities of international cooperation and an analysis of the goals that should be achieved. In this analysis some of the basic concepts and prospects of international cooperation are also considered, in an effort to lay down guidelines that will enable it to respond more effectively to the changing characteristics of organized transnational crime and the corresponding needs of States.

I. INTERNATIONAL AND REGIONAL INITIATIVES

8. The first involvement of the United Nations in the issue of organized crime dates back to 1975, when the Fifth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva from 1 to 12 September 1975, examined the changes in forms and dimensions of criminality - transnational and national - under agenda item 5. At that time, the focus was on crime as business at the national and transnational levels: organized crime, white-collar crime and corruption. It was pointed out how, in addition to ordinary criminals who escaped detection, there were powerful perpetrators of harmful acts who wielded their power and influence with impunity to the detriment of the community as a whole. Crimes of corporations and "organized" or syndicated crimes had many similarities and might involve the corruption of law enforcement and political authority. They also tended to be characterized by a high degree of secrecy and, as "invisible" crimes, they were difficult to detect.

9. "Crime as business" was recognized as a more serious threat to society and national economies than traditional forms of crime. While "crime as business" was a serious problem in many developed countries, in developing countries the national welfare and economic development of the entire society might be drastically affected by such criminal conduct as bribery, price-fixing, smuggling and currency offences. Definitions of terms relating to that type of crime were often vague and ambiguous, as the issue had been neglected by criminologists.

10. The Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Caracas from 25 August to 5 September 1980, in its discussion of agenda item 5, "Crime and the abuse of power: offences and offenders beyond the reach of the law",[1] added new elements to the international perception of organized crime. Emphasis was placed on the concept of abuse of power in its various forms: political, economic and social. Abuses of economic, social and political power were often interlinked. For example, economic crime served as a causal and aggravating factor in the corruption of the governmental process and of public officials.

11. Among offences beyond the reach of law discussed under agenda item 5 of the Sixth Congress, there were those legally defined as crimes but with respect to which the law enforcement agencies were relatively powerless because of the high economic and political status of their perpetrators, or because the circumstances under which they had been committed were such as to decrease the likelihood of their being reported or prosecuted. Organized crime, bribery and corruption were among the first examples mentioned in the discussion.

12. It was noted that the lack of data on offences involving abuse of power was hampering a proper understanding of the problems involved and the development of more adequate means of combating them. Problems were posed by transnational corporations in the abuse of economic power, often because of the inability of the victimized country to deal with them effectively, especially if it was a developing country. International cooperation to combat corporate crime on a global basis was called for. It was also stressed how individual countries were not always in a position to fight corporate abuses that transcended national borders. An international strategy was needed to combat, deter and prevent corporate crime worldwide, beginning with an immediate compilation, study and analysis of all current

national and international laws in this area. With the emergence of new and more dangerous types of criminal activity, further studies were required on this issue.

13. It was becoming more and more evident that the growing activities of organized crime were posing a serious threat worldwide. The issue was considered further by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Milan from 26 August to 6 September 1985, under topic 1, entitled "New dimensions of criminality and crime prevention in the context of development: challenges for the future."[2] It was emphasized that multiple illicit operations carried out by international criminal networks represented a major challenge to national law enforcement and to international cooperation. National boundaries no longer constituted effective barriers against those criminal activities. By exploiting the discrepancies in the legislation of different countries, organized crime achieved a high degree of impunity.

14. In many parts of the world, great social alarm was caused by the deleterious impact of drug abuse on many young people. The illicit traffic in narcotic drugs was one of the main illegal operations conducted by organized crime. Corruption added to the difficulties of preventing and controlling such international crimes.

15. The Seventh Congress adopted the Milan Plan of Action,[3] in which it fully recognized the international dimensions of crime and the need for a concerted response from the community of nations to combat its various forms. It also emphasized how certain forms of crime could hamper the political, economic, social and cultural development of peoples and threatened human rights, fundamental freedoms, and peace, stability and security. The United Nations had a significant role to play in contributing to multilateral cooperation in this field. The Plan of Action was to be implemented as "the collective endeavour of the international community to deal with a major problem whose disruptive and destabilizing impact on society is bound to increase unless concrete and constructive action is taken on an urgent and priority basis."[4]

16. In 1990, within the framework of its topic III, "Effective national and international action against: (a) organized crime; (b) terrorist criminal activities", the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders examined the problem of organized transnational crime in the light of the new historic developments.[5] In fact, the rapid increase in the number of independent countries, together with a true internationalization of criminal activities, had created the need for new international institutions that could introduce a measure of order and enhance the effectiveness of crime prevention efforts.

17. In the past, a few States had jointly enacted cooperation policies as necessary. These activities had been on an ad hoc basis and were never institutionalized. The changes in the world balance had created a need for institutionalization of the relations of sovereign and independent countries in all areas, including relations in the area of criminal law. A considerable body of international criminal law had been developed in recent decades; its systematization was the next logical step.

18. The pernicious effect of organized crime on economic, political and social institutions was once more underlined. Criminal undertakings discouraged domestic and foreign investments and adversely affected the daily flow of economic activities, undermining economic growth as well as political and social stability. As the financial aspects of organized crime were very frightening, there was an urgent need for new legislation that would effectively deal with the attempts to launder the proceeds of crime.

19. It was becoming increasingly obvious that the problem could not be solved at the domestic level. The degree of sophistication attained by organized crime and its international dimension called for joint

efforts: domestic legislative action and administrative reform, together with coordinated international action.

20. More effective cooperation in crime prevention was possible, as had been demonstrated by some initiatives at the subregional level. Political will and the willingness to revise certain traditional approaches were necessary, together with substantial increases in technical cooperation at all levels. All countries had to be put in a situation in which they could participate effectively in the cooperative network. The United Nations crime prevention and criminal justice programme had to be strengthened to respond to the rising number of requests for assistance.

21. A substantive step towards international cooperation was made in 1990, when the General Assembly adopted the Model Treaty on Extradition (resolution 45/116, annex), the Model Treaty on Mutual Assistance in Criminal Matters (resolution 45/117, annex), the Model Treaty on Transfer of Proceedings in Criminal Matters (resolution 45/118, annex), and the Model Treaty on the Transfer of Supervision of Offenders Conditionally Sentenced or Conditionally Released (resolution 45/119, annex). In the resolutions, Member States are invited to take these model treaties into account when establishing treaty relations with other States, and to strengthen international cooperation in combating organized crime. The General Assembly also adopted resolution 45/123 on international cooperation in combating organized crime, in which Member States were urged to implement the Guidelines for the prevention and control of organized crime, contained in the annex to resolution 24 of the Eighth Congress,[6] and invited them to make available to the Secretary-General national legislation pursuant to that resolution.

22. On the basis of the above-mentioned appeals for cooperation in combating organized transnational crime, the Ad Hoc Expert Group Meeting on Strategies to Deal with Transnational Crime was held in May 1991, at Smolenice. The Meeting, attended by experts representing the five geographical regions and by representatives of the International Criminal Police Organization/Interpol (ICPO/Interpol), strongly emphasized the urgent need to respond more effectively to transnational criminality, as the legal tools available to Governments were often not suitable for effectively combating new transnational manifestations of criminality, and it adopted a number of recommendations covering national, regional and international action to contribute to closer international cooperation (Economic and Social Council resolution 1992/23, annex I). In October 1991, an International Seminar on Organized Crime was held at Suzdal, which was attended by law enforcement officials and experts from 15 countries and ICPO/Interpol. The practical measures against organized crime formulated during the seminar included considerations concerning the nature, extent and impact of the problem and called for action in the fields of legislation, law enforcement methods, organizational structures, international cooperation and evaluation of the gravity of the threat (Economic and Social Council resolution 1992/23, annex II).

23. In the meantime, in pursuance of General Assembly resolution 45/108 entitled: "Review of the functioning and programme of work of the United Nations in crime prevention and criminal justice", the Ministerial Meeting on the Creation of an Effective United Nations Crime Prevention and Criminal Justice Programme was convened at Versailles from 21 to 23 November 1991. It was recognized that, in the fight against crime, even the most strenuous efforts by any individual State would have little success unless supported by international cooperative action. Only the United Nations could effectively coordinate such action, by developing and implementing a concerted and truly international strategy directed at providing practical help. Technical cooperation and assistance were thus of paramount importance in that context.

24. The General Assembly, in its resolution 46/152 of 18 December 1991, took note with appreciation of the report of the Ministerial Meeting (see A/46/703 and Corr.1) and adopted the proposed statement of principles and programme of action, which, inter alia, called for the establishment of a commission on crime prevention and criminal justice. The Commission was established by resolution 1992/1 of the

Economic and Social Council, as one of its functional commissions. At its first session, held from 21 to 30 April 1992, the Commission further underlined the importance of international cooperation to counteract crime and in section VI of its draft resolution I, adopted by the Economic and Social Council in its resolution 1992/22, indicated as one of the priorities of the programme national and transnational crime, organized crime, economic crime, including money-laundering, and the role of criminal law in the protection of the environment.

25. Of the two draft resolutions on the subject adopted by the Commission at its first session, the first (see Council resolution 1992/22), as already noted, established that transnational, organized and economic crime had to be priority themes for the United Nations crime prevention and criminal justice programme. The second (see Council resolution 1992/23), noting the recommendations of the Ad Hoc Expert Group Meeting on Strategies to Deal with Transnational Crime and the International Seminar on Organized Crime, requested the Secretary-General to continue the analysis of the impact of organized criminal activities upon society at large. The Commission, at its first session, also requested the Secretary-General, inter alia, to examine the possibility of coordinating efforts made at the multilateral level against laundering of proceeds of crime and related offences, and to propose means for rendering technical assistance to requesting Member States in drafting legislation, training law enforcement personnel, in developing regional, subregional and bilateral cooperation and in providing advice.[7]

26. In view of the activities and decisions described above, the General Assembly, in its resolution 47/87, requested the Commission on Crime Prevention and Criminal Justice to organize the ongoing review and analysis of the incidence of transnational organized criminal activity and the dissemination of information thereon, and called upon Member States, international organizations and non-governmental organizations to cooperate with the United Nations in organizing practice-oriented workshops, research projects and training programmes to deal with organized criminal activities.

27. In 1993, the Economic and Social Council adopted three resolutions recommended to it by the Commission on Crime Prevention and Criminal Justice at its second session. In the first one (resolution 1993/29) the Secretary-General was requested to organize a World Ministerial Conference on Organized Transnational Crime, to be held in 1994 in Italy, the Government of that country having offered to act as host.

28. In the second resolution (resolution 1993/30), the Council called, inter alia, for technical assistance to be provided for the prevention and control of the proceeds of crime. The crucial role of the United Nations crime prevention and criminal justice programme for the promotion of international cooperation in crime prevention and criminal justice and in responding to the needs of the international community in the face of both national and transnational criminality was then reaffirmed by the Council in its resolution 1993/31 and later by the General Assembly in its resolution 48/103.

29. Organized transnational crime continued to be a topic for the Commission on Crime Prevention and Criminal Justice at its third session, where the discussion on this issue was reflected in three draft resolutions subsequently adopted by the Economic and Social Council. The first resolution (Council resolution 1994/12), on organized transnational crime, to which was annexed a discussion document on the World Ministerial Conference on Organized Transnational Crime, highlighted the importance of the Conference as a means of reaching agreement on the adoption of a series of measures against organized crime, including the establishment of a common perception of organized crime within the international community; the punishment, under national law, of participation in a criminal organization; confiscation of the proceeds of crime; the development of investigative methods to penetrate criminal organizations, including specialized investigative units; the development of international agreements for extradition, mutual legal assistance and the improvement of practical application of existing model treaties in these fields; technical cooperation, including the international exchange of intelligence and the training of law

enforcement personnel; economic compensation for victims; and the feasibility of elaborating international instruments, including conventions, against organized transnational crime.

30. The second resolution (Council resolution 1994/13) was devoted to the control of the proceeds of crime, in which the Council recommended that the World Ministerial Conference on Organized Transnational Crime should take into account the conclusions and recommendations of the International Conference on Preventing and Controlling Money-Laundering and the Use of the Proceeds of Crime: a Global Approach. The Council also requested the Secretary-General, taking into account the work already carried out by Member States and intergovernmental organizations, to cooperate with them in the inclusion of anti-money-laundering provisions in national legislation and in the organization of training and assistance programmes.

31. In the third resolution (Council resolution 1994/14), on criminal justice action to combat the organized smuggling of illegal migrants across national boundaries, the substantial role played by organized transnational crime in illegal migrants smuggling activities in many parts of the world was recognized. The Council also called upon Member States and relevant specialized agencies and international organizations to cooperate, at the bilateral and multilateral levels, in tackling all aspects of the problem of the organized smuggling of illegal migrants, against which States should take prompt and effective countermeasures.

32. The involvement of organized transnational crime in an increasing range of activities was further stressed by the Commission on Crime Prevention and Criminal Justice through a resolution on international traffic in minors,[8] in which the Commission, being aware that this activity was carried out by criminal organizations that had transnational connections, and calling upon Member States to consider ways of enacting legislation to combat this traffic and to promote cooperation amongst them, decided that international traffic in minors should be considered by the Commission at its fourth session in the context of its discussion on organized transnational crime.

33. In the field of drug abuse control, it should be recalled that in 1988, the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (E/CONF.82/15 and Corr.2) was adopted. This Convention represented one of the first and most important international binding instruments drawn up to combat organized transnational organizations and one of their most lucrative activities. The Convention foresees, inter alia, criminalization of the laundering of the proceeds of drug trafficking and calls for international cooperation and assistance, including the development of means such as extradition, mutual legal assistance and transfer of proceedings. In 1990, the General Assembly adopted the Political Declaration and the Global Programme of Action (resolution S-17/2, annex) against illicit production, supply, demand, trafficking and distribution of narcotic drugs and psychotropic substances, activities which strengthened transnational criminal organizations.

34. Regional initiatives enjoy a considerable advantage because of their two main characteristics. They are pursued in an environment where there are fewer cultural differences and fewer problems of compatibility between different juridical systems. In addition, such initiatives are designed to cope with specific problems and often complement other political and economic joint efforts and schemes. The results achieved in terms of convergence and compatibility of policies within regions can be considered as a very important first step in strengthening the process of worldwide action and more meaningful and effective international cooperation. The solutions selected to deal with common problems and to overcome obstacles, which still exist in spite of the prevailing homogeneity, can serve as useful examples of effective cooperation at the global level.

35. Regarding more effective forms of inter-State cooperation, examples can be found in a number of regional settings, like the Council of Europe and its network of conventions,[9] the European Union and

its recent efforts to improve cooperation in criminal matters on the basis of the Maastricht Treaty, including the establishment of EUROPOL, the Organization of American States and its Inter-American Drug Abuse Control Commission (CICAD), the League of Arab States and the Commonwealth Secretariat, or in other groupings like the "Schengen States",* the "Nordic Scheme",** and the Benelux States.*** Each regional group has developed different instruments responding to their needs, but these patterns of collaboration represent, simultaneously, a trend, as well as a way towards improved mutual cooperation.

36. The instruments so far developed were the outcome of the ever-growing concern of States about offences with transnational aspects. While mutual assistance and extradition remain the backbone of regional cooperation, new arrangements have been elaborated, which include transfer of criminal proceedings, execution of foreign criminal judgements and transfer of prisoners. While the first, transfer of proceedings, was envisaged as a means of ensuring the prosecution of the accused where extradition was denied, the other two are based on the transfer of the last phase of a criminal case, and on the execution of a penalty on humanitarian grounds as well, since the convicted person is allowed to serve the sentence in his or her own country.

37. Regional initiatives have at least one common characteristic. Their origin lies in bilateral arrangements and cooperation schemes of a more or less informal nature but they have evolved into essential multilateral instruments of cooperation. In many instances, the multilateral arrangement is a framework for compatible and dynamic bilateral cooperation on various fronts. In others, multilateral instruments have built on the experience of bilateral arrangements and have advanced towards common and concerted action of specific proportions and against specific problems. In all cases, regional cooperation has evolved through the convergence of policies and a gradual confidence-building phase, reflecting the need of States to protect jointly their common interests and values. Another element of considerable importance is the realization by States in a given region of the fact that reliance not only on their own capacity but also on that of their neighbours is crucial in overcoming obstacles to their well-being. A direct consequence of this realization is that the concessions that are necessary in every type of cooperation and genuinely joint action are viewed as long-term gains rather than as losses.

38. In addition to the homogeneity of the countries involved, in historical, geo-political and cultural terms, regional initiatives enjoy another advantage. More often than not, the divergences between the countries of the same region or at the same stage of development are not dramatic, and are effectively counterbalanced by other cohesive factors.

39. One of the most innovative aspects of regional instruments is the fact that the principle of territoriality is weakened and the question of sovereignty is approached in a new way. Serious obstacles to international cooperation result from the jurisdictional conflict between the courts of two States, when the territorial principle and the active personality principle are asserted. While the choice between the two principles would normally be based on the character of the offence, it is often suggested that

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*The Schengen Agreement between the Governments of the States of the Benelux Economic Union, the [then] Federal Republic of Germany and the French Republic [later joined by Italy, Portugal and Spain] on the Gradual Abolition of Checks at their Common Borders was signed on 14 June 1985 and led to the Convention of 19 June 1990 applying the Agreement.

**Denmark, Finland, Iceland, Norway and Sweden have developed a system for harmonizing their domestic laws. This "uniform" legislation is aimed at improving inter-State cooperation in criminal matters.

***The Benelux Extradition Convention is one of the oldest regional mechanisms for cooperation, dating back to 1962.

obstacles are overcome, for example, by having simpler cases transferred at the stage of preparatory proceedings whereas other cases are transferred after sentencing.

40. In spite of their definite advantages and the inroads they have made, regional schemes are by no means a panacea. Transnational organized crime is known for its versatility and increasing sophistication, as well as its mobility. Regional arrangements and instruments deal with the problem in exactly the area they are designed to cover. It could be said that their effectiveness is simultaneously their limitation. While countries covered by a regional arrangement may enjoy relative security from, and score successes against, organized criminal groups located or operating within the region, it is inevitable that they will have to face the effects of these groups relocating outside the region and continuing to target that region as a whole. Eradicating the problem from a group of countries does not necessarily mean solving it. Relocation is a mechanism that does not entail much more than perhaps additional and unforeseen expenses for a well-organized criminal group. It may also imply an improvement of its operations and a more structured approach to its efforts to maximize opportunities. The effectiveness of a regional arrangement may also result in shifting the burden to other countries and regions less equipped to deal with it and less capable of doing so. The lack of a comprehensive mechanism based on such instruments, and intended to be the standard by which their usefulness is measured, becomes evident. These tools were often elaborated as a first response to criminal behaviour characterized by transboundary elements. Consequently, their creation was not followed by their systematization or by a mechanism extending their reach beyond certain limits. As a result, a general priority scale applicable to different situations in different settings does not exist.

41. The body of knowledge and expertise acquired in years of commitment may represent the benchmark for the international community when it has to identify the tasks that are to be accomplished to achieve the target of a world of peace, democracy and justice for all. They represent valuable tools for the international community at a time when international cooperation appears to be the only effective weapon against organized transnational crime.

II. BASIC PRINCIPLES OF INTERNATIONAL COOPERATION

42. Any discussion of international cooperation will necessarily involve a clear understanding of priorities and objectives. International cooperation on a particular issue, such as the ability of criminal justice systems to prevent and control organized crime, implies a thorough knowledge of the risks involved both in the short and long term. In addition, it requires an accurate assessment of the capacity of the criminal justice system to deal with complex forms of crime. A combination of these parameters, with the appropriate balance, would serve to put international cooperation into perspective. Only knowledge and careful evaluation can lead to the appropriate selection of priorities and objectives. Policy makers at the national level, those ultimately capable of and responsible for building, sustaining and advancing international cooperation, as well as setting its pace, need this knowledge to guide them towards rational decisions. Policy makers also have to be able to strike the appropriate balance between competing interests, both political and financial. The world today is characterized by limited resources. Balancing the multiple interests competing for these resources is difficult for every Government, regardless of its level of development. International cooperation requires undivided attention and genuine commitments at all levels of Government for the pooling and allocation of the resources commensurate to the risk posed to the international community by organized transnational crime.

43. Organized crime groups are becoming increasingly transnational, both in scope and activities. They achieve this by pursuing two main strategies: minimizing the "law enforcement risk" and maximizing the opportunities available for illicit profit. Minimizing the law enforcement risk means calculating the sum of the probabilities of being identified, apprehended, prosecuted and convicted.

Together with the exploitation of market opportunities and the creation of new ones, these are the essential components of what may be termed "illegal enterprise's risk", the risk that organized criminal groups are prepared and willing to incur for carrying out their activities in more than one country. From the point of view of societies and Governments, there is yet another risk, the "transnational organized crime risk", which refers to the probability that organized crime groups will expand their structures and activities in countries other than those in which they were initially located. The two risks are related, the variables that are the main components of the one being the reverse image of the variables that make up the other.

44. The transnational organized crime risk tends to increase when the illegal enterprise's risk for the organized crime groups is unequally distributed among countries. Organized crime groups will tend to internationalize and expand in countries where the opportunities are greater and the law enforcement risk is lower. The more equally the risk is distributed among countries, the less the organized criminal groups will be tempted to displace their activities outside the countries where they are traditionally located. In other words, the greater the external risks for organized criminal groups, the lesser the probability that they will internationalize their activities.

45. Controlling the international distribution of the illegal enterprise's risk should be the objective and indeed the rationale for cooperation among countries, especially in the area of law enforcement and criminal justice. As has already been emphasized, a more effective response to transnational criminality has become a matter or urgency, particularly in view of the growing exploitation by transnational criminals of traditional principles and the practice of sovereignty and territorial jurisdiction (see Economic and Social Council resolution 1992/23, annexes I and II).

46. The legal tools available to Governments are often found to be unequal to the task of effectively combating the new transnational manifestations of criminality and it is therefore through their attacks on traditional principles and sovereignty that organized criminals have succeeded in carrying out their illicit operations at a considerably lower risk to themselves.[10] If criminal organizations are attracted to the process of internationalization because they have found areas where the risk from the law enforcement authorities is minimal, then coordinated international action to equalize this risk in various countries will minimize or contain the process. Equalizing the risk means raising the quantity, quality and, more importantly, compatibility of preventive control action at an adequate level on a worldwide scale and putting in place mechanisms designed to maintain and improve that level in a consistent and coordinated fashion.

47. While controlling the illegal enterprise's risk means reducing illegal opportunities and vulnerability to a level sufficient to discourage, or at least not attract, transnational crime, controlling the distribution of the transnational organized crime risk is a matter of distributing the policies directed at the control of crimes and at authors of those crimes. The ultimate aim of this process would, therefore, be to secure an optimal distribution of risk among countries.

48. One of the fundamental objectives of international cooperation and technical assistance in this field would be to ensure that all countries reach some minimum common areas of preventive and control policies and constantly cooperate with others in order to maintain a minimum common level of reaction. This process implies, first of all, dealing with a series of questions that have to be answered to determine the most appropriate strategies and policies for increasing the risk for organized crime and, at the same time, equalizing it among countries.

49. The main questions concern the goals the international community wants to achieve; the degree and dimension of convergence and compatibility needed to counteract transnational crime; which policies need to be made compatible; the ways in which the goals can be achieved; what countries require to

embark successfully on this task; and the mechanisms that could provide the impetus for convergence and compatibility, as well as coordinating them.

50. The preceding questions lie at the root of the philosophy of international cooperation and technical assistance in crime prevention and criminal justice matters. The discussion on the rationale for international cooperation and the factors inhibiting its effectiveness (see E/CONF.88/2) is bound to centre on an inherent difficulty. Experience has shown that there often appears to be a gap between the rhetoric and the substance of international cooperation.

51. There seems to be both a ritual and a practical approach to international cooperation. The former involves public declarations regarding the will of the international community to take action in criminal justice matters and an emphasis on a growing list of initiatives in international settings. At the practical level, what is at issue is the actual cooperation between one or more countries in compiling information, sharing intelligence, collecting and preserving evidence, arresting a fugitive, freezing or confiscating assets of criminal origin, and extraditing or prosecuting criminals.

52. These are two sides of the same coin. The political will and unwavering commitment behind international cooperation constitutes the framework for operations at the practical level. In some ways, they can be reconciled on the basis of a compromise between the collective interest and the individual interests countries have in criminal justice matters. International cooperation can be effective only if its efforts are producing more advantages for all countries - and consequently for the international community - than a single country can achieve through individual action.

53. This process of reconciliation will happen more easily when the effectiveness of international cooperation, and countries' individual interests become recurrent and reciprocal. The more countries become aware of the difficulties and costs of dealing individually with criminal justice matters, the more likely they are to regard international instruments and mechanisms as the solutions to their problem. Consequently, the more they legitimize international cooperation, and the more legitimized international cooperation is, the more effective it will become. Success will breed success and more countries will enter international agreements with greater enthusiasm, making international cooperation once again more and more effective. If this process is not primed, international cooperation will remain a rite, with little substance.

54. Another issue of central importance, and one directly linked to the fundamental concept of international cooperation, is technical assistance. Effective international cooperation often depends on the capacity of the criminal justice system of a given country. Raising the level of knowledge, expertise and professionalism of a criminal justice system requires resources that many countries lack. Technical assistance is then the only way of ensuring that structural difficulties are overcome. The provision of technical assistance can take many forms, depending on the needs of the recipient and on the availability of donor resources. Technical assistance can range from advisory services to the provision of equipment, and will almost invariably include specialized training. The planning and execution of technical assistance projects require constant cooperation and consultation with the competent authorities of the recipient country at every stage of the process. Particular attention should be given to ensuring that assistance is based on the actual needs of the country in question, to be determined by that country, if necessary in consultation with those providing the assistance. Assistance needs to be tailored not only to the specific needs but also to the political, cultural and legal traditions of the recipient country. It should be realized that measures and policies that have proved effective in dealing with a specific problem may need to be substantially modified to retain their effectiveness in different settings or systems. In many cases, the very basic principles or rationale of action are the only elements that can be retained, and new measures and policies have to be designed. A failure to structure and deliver

technical assistance on these grounds risks not only rendering such assistance entirely ineffective but also creating an environment that is far from conducive to meaningful cooperation.

55. The overall capacity and stage of development of the criminal justice system are factors that should be taken into account in all technical assistance efforts, particularly when such assistance is intended to help the recipient country to deal with organized transnational crime. Because of the sophistication of this form of crime, assistance is often aimed at strengthening or improving legislative and law enforcement measures. Such interventions, however, need to be planned and developed on the basis of a thorough knowledge of the criminal justice system in question and its overall capacity, as well as on a careful evaluation of their impact on that particular criminal justice system. For example, the establishment of a special investigation unit for offences related to the laundering of the proceeds of crime may improve the detection and apprehension of money-launderers. Its successes may, however, be frustrated if the prosecuting and judicial authorities are not in a position to evaluate and use the evidence that the efforts of that unit have yielded.

56. Another issue that needs to be carefully considered is coordination. Multiple assistance projects are directed almost simultaneously at the same component of the criminal justice system, overlapping if not conflicting with each other. The result is an unnecessary duplication of effort, which may lead to confusion among recipients and thus render technical assistance ineffective. Coordination is necessary on the part of all concerned and should be viewed as an essential complement to the structured and thorough preparation and provision of technical assistance. Without it, the resources devoted to such assistance fail to achieve the intended goals.

57. The traditional rationale for technical assistance, either in drafting new legislation or in training criminal justice personnel, is to help countries to cope more effectively with their problems. The global situation has radically changed in the past few years, however, and so have the needs and goals of the international community. Technical assistance needs to be viewed in the context of the new political and economic realities and to be adapted to them, in terms of both concept and objectives. Technical assistance programmes should be designed to enable countries to equalize the organized crime risk and to do so in such a way as to contribute to the collective interest in deterring the expansion of organized crime.

58. If this objective is missed in planning and providing technical assistance, such assistance will remain a solidarity tax that developed countries pay directly or through multilateral mechanisms. It will be welcomed, but not enough, and the more countries are constrained by limited resources, the less technical assistance they will provide. It is essential, therefore, that technical assistance become more and more a productive investment for three different types of interests: those of the countries receiving assistance, those of the countries giving it and those of the international community.

III. THE PROCESS OF CONVERGENCE

A. Goals

59. The main goal of convergence will be to reduce the transnational organized crime risk and equalize the illegal enterprise's risk. In doing this, an understanding of strategies and targets is vital.

60. The overall strategy of international cooperation should be to encourage and promote a gradual but consistent convergence of preventive and crime control policies among countries, in order to render them equally effective. Preventive policies are designed to reduce the opportunities for criminal activity

and to minimize the vulnerability of legitimate businesses to the infiltration of organized crime. Crime control policies, in contrast, are intended to control the crimes committed by organized crime groups.

61. The targets of preventive policies are to build and maintain a consensus of public opinion, creating and strengthening conditions of legality and morality, and establishing and promoting the transparency of the financial systems. The targets of crime control policies are the criminals and their illicit assets. Both persons and assets are the key elements of the organizational structure of organized crime groups.

62. Once the goals of international cooperation have been identified, the scope of their convergence will have to be determined. The danger posed by organized transnational crime and its effects point in the direction of a convergence of global scope. It should be kept in mind, however, that obtaining a worldwide consensus on an accepted set of policies against organized transnational crime is bound to be a process of increased involvement and integration among countries and regions. This process requires strong commitment on the part of the entire international community and a will to smooth out differences and overcome difficulties. The process has begun, however. Owing to the emergence of illicit drug trafficking as a global phenomenon, there are more similarities today in the policies of different countries to combat this form of crime than there were 10 years ago. The role of international and regional mechanisms in this area has been essential for nurturing and facilitating this process. Policies directed at the equalization of the law enforcement risk will require not only a similar realization on the part of the international community but also a more comprehensive approach.

63. The strictu sensu interpretation given to cooperation and assistance in the past limited such activity to a case-by-case relationship between the competent authorities of one State and those of another, supporting judicial or quasi-judicial proceedings. This form of cooperation, based on the needs of one country and on the requirement of reciprocity, began to reveal its limitations when it came face to face with the internationalization of organized crime. The characteristics of organized crime groups, namely secrecy, internal solidarity and structure, made it a peculiar phenomenon. It soon became self-evident that organized crime, particularly in its transnational forms, had dimensions that could not be dealt with by traditional law enforcement schemes.* Investigation, detection and prosecution were therefore seen to be critical issues in the fight against organized crime, in part because major problems arose from the lack of coordination between the legislative and law enforcement bodies in the countries concerned. It is thus clear that mechanisms are needed, covering all forms of cooperation and assistance, from police investigation to judicial proceedings, which will encourage the law enforcement authorities of countries affected by specific organized crime activities, to collaborate among themselves and work together effectively to deal with organized transnational crime.

64. The efforts of Governments to secure more effective international cooperation may be used as a springboard for mechanisms that have already been tested, even if only as informal judicial assistance arrangements or collaborative transfrontier investigations. Admittedly, these arrangements often entail many more concessions on the part of Governments than would be the case in more formal bilateral agreements. The successes scored by regional cooperation, however, constitute ample proof of the validity of this type of collaboration. "Hot pursuit" and cross-border observation are examples of fruitful techniques implemented in a regional setting. Unlike traditional and more formal agreements of judicial assistance, no specific action is required by foreign authorities in terms of proceedings. The informal

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*For an overview of the current state of development and needs in international cooperation against organized transnational crime, see Economic and Social Council resolution 1992/23, annex I, and the report of the Secretary-General on the impact of organized criminal activities upon society at large (E/CN.15/1993/3), submitted to the Commission on Crime Prevention and Criminal Justice at its second session.

arrangements are primarily based on the mutual understanding that independent investigations by foreign law enforcement officers will be accepted and assisted.

65. While the basic premise of these arrangements is a working and often personal relationship between law enforcement officers, the process of confidence-building can serve as a model for arrangements of a broader scope and territorial coverage. Such confidence-building could be actively pursued, particularly under the present favourable political conditions, for example through the regular exchange of information and personnel. It is no doubt a slow process and may encounter certain obstacles. It can nevertheless make a significant contribution to establishing more formal arrangements and building an institutional framework for international cooperation. This contribution would consist in fostering and improving a better and more direct understanding of specific problems and methods of work, as well as cultural, political and legal traditions. The knowledge obtained would be crucial in modifying or designing policies that would be compatible and, therefore, conducive to international cooperation.

66. Governments may need to consider reviewing their criminal policies from both the substantive and the procedural perspective. From the substantive point of view, attention should be paid to the criminalization of certain forms of behaviour. The experience gained in the countries where organized crime is criminalized by comprehensive and appropriate legislation should encourage the elaboration and adoption of similar laws. This could be done in a concerted manner, thus avoiding discrepancies among the various countries and promoting the convergence of mechanisms and policies. The international debate on organized transnational crime has already reached some landmark points and this should testify both to the awareness and the willingness to fight it in a concerted and coordinated fashion. From the procedural point of view, Governments would need to consider issues related to traditional concepts of sovereignty and individual decision-making in the light of problems posed by new criminal activities. The realization at the political and decision-making level of the actual magnitude and complexity of organized transnational crime may serve as a basis for elaborating improved forms of international cooperation, drawing on the pool of knowledge and experience in the scientific community.

67. The differences between civil law and common law systems have not prevented international cooperation in the past. The long-standing tradition of bilateral treaties and multilateral conventions supports the idea that, where agreement is reached on a topic, mutual cooperation may run smoothly. The problem is how to develop strategies and techniques that will reduce the number of obstacles to international cooperation. The most recent instruments of international criminal law could provide useful suggestions to that end.

68. While there has been a trend towards progressive internationalization in the expansion of criminal organizations, experience has shown that organized crime groups have tended to begin extending their operations in countries close to their areas of origin, when these countries afforded better conditions for avoiding the law enforcement risk. This preference, stemming from migratory movements, greater knowledge of the economic and social systems and even familiarity with the language, is revealed by the dynamics of many organized groups now generally considered as transnational.

69. The Chinese Triads have expanded in Asia, as has the Sicilian Mafia in Europe, and the Colombian cartels have put out their tentacles in Latin and Central America, while the Russian criminal organizations have extended their activities to other countries of the Commonwealth of Independent States and to the countries of Eastern Europe. The process of internationalization that allows these well-established groups to operate in areas of the world far away from their traditional location originally began within the region. In order to prevent the development or expansion of other groups the regional dimension must be taken into account when policies and mechanisms are devised for the prevention and control of criminal activities.

70. Efforts in this direction will not begin to bear fruit until bilateral formal or informal cooperation has started to develop between countries of the same region. The convergence of policies and measures in the various regions of the world complements the promotion of wider international cooperation and the establishment of effective international mechanisms. International cooperation, however, also requires the active support of the international community not only in terms of resources but also through political commitment.

71. For regional and international cooperation to succeed, Governments would have to interact actively with the international and regional organizations concerned and facilitate their work by providing expertise, information and resources; initiatives related to the provision of technical assistance would also require support.

72. At the international level, cooperation is to be sought, first of all, for the purposes of criminal investigations and proceedings aimed at confiscating the proceeds of crime. Assistance should be provided at the investigative level, either to identify and trace the proceeds, or to seize or freeze property. At the court level, foreign prosecutors may need assistance in enforcing a decision to confiscate. The question of handing over the confiscated property to the countries concerned, or sharing it with them, deserves particular attention, because it could well encourage these countries to become more involved in the fight against organized transnational crime.

73. An important issue in international cooperation in criminal matters is the consideration given to the basic rights and guarantees afforded to the prosecuted or convicted individual.[11] Significant results in international cooperation have been achieved by countries that share the same cultural and political values, while there is a reluctance to extend full cooperation to countries that do not guarantee the enforcement of the same ideals.* The issue of human rights is certainly one the international community must consistently pursue, but the protection of individual rights can surely be reconciled with the protection of the rights of society as a whole. Thus, bearing in mind the well-entrenched results of the democratic process, new strategies and techniques ought to be developed for improving international cooperation, while continuing to promote the universal protection of human rights.

B. Compatibility of policies

74. Combating organized crime involves a mechanism of strategies and policies that need to be strengthened inside a country. International cooperation must therefore be aimed at harmonizing those strategies and policies in different countries.

1. Preventive policies

75. One of the key issues is how to secure the compatibility of policies designed to reduce illegal opportunities for criminals. In the case of organized crime, a policy can be geared towards reducing the demand for illegal goods and services, or evaluating the impact that different approaches to that end may have.

76. Policies aimed at reducing illegal opportunities, decreasing the demand for illegal goods and services or attempting to regulate them would arguably be more effective if developed and applied at an international level. If there are territories where the demand is greater than in others, or if illegal goods are made legally available in some countries, organized crime groups will be attracted to the place

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*In the Council of Europe, for instance, 85 per cent of the extraditions are between member States.

where the difference in policies affords them better opportunities and they will develop their patterns of internationalization accordingly.

77. Markets are becoming global, and constant communication and growing interdependence increases both legal and illegal opportunities, making it more difficult to control them in the absence of international forms of regulation. Just as national enterprises look for opportunities in other countries, criminal enterprises exhibit the same attitudes and adopt the same behaviour in illegal but also in legal markets. As regulation of legitimate business is becoming more and more international and regional, similar policies are needed to counter the problems posed by organized crime.

78. One question of the utmost relevance and importance is how policies aimed at diminishing the vulnerability of legitimate industries to infiltration by organized crime groups can be made compatible. The convergence of policies that can produce the maximum level of transparency and competition in legitimate markets would be a step in the right direction. By promoting the flow of information and public scrutiny of legitimate business, transparency creates a shield against organized crime groups. Competition operates largely the same way by preventing an unlawful concentration of business power and by equalizing business opportunities. The European Union, for instance, has had considerable experience in these areas and has been engaged in regulating economic activity in the European market so as to reduce the risk of monopolies and tackle the problem of transparency of the financial systems through money-laundering legislation as well. Expanding the area of economic activity to encompass industries previously limited to one country and ensuring guarantees for open markets is a step towards minimizing the risk of infiltration of these activities and industries traditionally "protected" from foreign competition by organized crime groups.

79. The convergence of preventive policies in the area of corruption of public officials could be pursued and extended, inter alia, to corporate accounting and reporting procedures and tax examination policies that help to make it more difficult to generate illicit money for corruption purposes. The use of standardized codes of conduct for economic enterprises and public administration could also be promoted. The work of the United Nations and other intergovernmental organizations and the experiences in this area of particular countries may pave the way to a comprehensive process of convergence.

80. Money-laundering is an area in which the convergence of preventive policies has been developed more fully through a comprehensive set of measures, evolved in a number of countries and at the international level by intergovernmental entities. The starting point for equalizing the illegal enterprise's risk for organized crime groups is for all countries to begin to devise homogeneous policies for reporting suspicious transactions and to implement procedures for securing the identification of customers who use their banking and financial institutions. For non-banking financial institutions, licensing procedures may be necessary in order to prevent organized crime groups from using them as an alternative to the more regulated banking system. These preventive policies are strictly linked to criminal policies in the same area.

2. Crime control policies

81. The range of crime control policies is broad and includes substantive and procedural legislation, special programmes and law enforcement methods and their organization. Many of these policies for combating organized crime differ according to legal traditions and systems, the perception of the problem, the skills and capabilities of criminal justice system personnel, the level of organization of the criminal justice system and, more importantly, the level of resources available for the criminal justice system and its management.

82. In identifying policies that need to be made compatible, certain criteria have to be applied. In the present context, the need for compatibility is related to the equalization of the law enforcement risk in different countries in order to deter the internationalization of organized crime groups. Consequently, the maximum degree of compatibility among policies of different countries will be achieved when such policies are perceived by the organized crime groups themselves as having an equalizing effect. Compatibility is an important step towards achieving substantive international cooperation, because it helps to increase the capacity of different systems to work together.

83. The conditions for the convergence of domestic crime control policies are mainly two: the demonstrated effectiveness of these policies and some degree of flexibility in achieving compatibility with other policies of the same kind. On the basis of these criteria, the responsiveness of existing policies against organized crime to the need for compatibility of the law enforcement risk among different countries are to be analysed and evaluated.

84. The different legal traditions of civil and common law systems may account for many of the differences between countries. It is important that, beginning at the regional level and eventually extending to the international level, countries should achieve a common realization that crimes committed by an organized crime group represent a bigger threat than those committed by an individual or a casual organization.

85. The existence of organized crime groups is a threat per se. It is self-contained, because a criminal group is established with a view to committing any activity worth being exploited, striving to build it up and exercising the power that goes with it.

86. The increased risk to organized crime that crime control policies would be aiming at relates to the two targets mentioned earlier, persons and assets. Regarding the former, the core element of these policies would be the sanctions inflicted upon members of organized crime groups, when arrested, prosecuted and convicted, while for the latter it would be forfeiture and confiscation of the assets resulting from, or used in, criminal activity.

87. Reference should be made at this point to a set of policies involving a form of simultaneous prevention and control. These are policies traditionally used to interdict transnational movements of people. They have been concentrated on two main related issues: control of the borders and immigration laws. Although these policies are not specifically designed to equalize the law enforcement risk for organized crime groups, their adoption and implementation can have certain positive effects.

88. Traditionally, control at borders for the purpose of tracing criminals has not been a very effective tool against criminals who have a wide range of activities. Furthermore, even though some law enforcement operations have been helped by border checks, organized criminals have been accustomed to using fake documents or crossed uncontrolled borders. The usefulness of border checks for tracing criminals may have to be carefully evaluated in view of their heavy cost. In many cases, personal interdiction for criminals, in the sense of apprehension, may be less effectively achieved through border controls. The policy is much more effective in controlling migration flow, which is the main object of contemporary systems. The combination of border and immigration controls can be a very effective system for monitoring foreigners operating inside the countries and for collecting valuable intelligence.

89. Frequent analyses of the data on immigrants, categorized by nationality, place of birth, former place of residence, profession or work performed and new place of residence, can be useful in monitoring the migration of criminals and in some cases in alerting authorities to their infiltration of legitimate businesses. In a multi-ethnic world, these controls are difficult to maintain over a long period. For the purpose of controlling the organized crime risk, however, countries could plan to establish

databases and implement some forms of immigrant monitoring and control for a short period, usually the time a criminal needs to settle down in the new society and begin to exploit its structures. These databases would be even more useful if they were shared on a regional basis.

90. Interdiction policies can work better against instrumentalities of crime through modern technology. Detection of illegal money, drugs, chemical precursors, weapons and other kinds of material supplied by organized groups is at present either haphazard, or managed through informants. Recent developments of computerized scanner technology can now monitor the movement and flow of goods much more effectively than in the past, making it more difficult for organized crime groups to smuggle illegal merchandise across the borders.

91. Interdiction policies need to be carefully structured and, where necessary, reshaped in accordance with present circumstances and realities, since the risk of organized crime is concurrent and linked with the worldwide trend of closer international relations, the opening of borders to free trade and the uninhibited circulation of persons, goods and capital. Global markets are becoming a reality and the risk of this trend being exploited by organized crime groups is clear and present.

92. The challenge is how to continue to pursue free trade and open border policies without compromising security and peace. The answer may lie in the increased use and development of new technologies. Admittedly, new technologies are expensive and require a substantial investment, which many countries may find difficult to make. However, a cost-benefit analysis should be made, in view of the efficiency and effectiveness of new technologies. In terms of management of criminal justice systems, international cooperation would stand to benefit from a rational approach to the issue in order to ensure that the most effective and appropriate technologies are applied at key points and possibly shared with other countries, at the same time keeping in mind the need for compatibility.

93. Legislation, both substantive and procedural, occupies a prominent place among policies to combat organized transnational crime. It remains one of the primary tools at the disposal of Governments for the purpose of protecting the values and security of their societies and fostering growth and development. Legislation, however, needs to be dynamic and to adapt itself to, if not to foresee, developments. In the case of organized transnational crime, legislation should be developed with a view to fostering international cooperation and concerted action. Legislation should be structured and elaborated in such a way as to deal severe blows to organized crime groups at points where they would be most effective. One of these points is the organizational structure of criminal groups. Targeting this structure permits authorities to crack the shell of criminal groups and follow the thread leading to the top, effectively dismantling the organization. The offence of "participation in an organized criminal association", as included in Italian law since 1982, and the offence of "participation in the affairs of an enterprise through a pattern of racketeering", as described in the 1970 Racketeer Influenced and Corrupt Organizations (RICO) statute of the United States of America are intended to deal with the existence and the functioning of an organization devoted to committing crimes.

94. Creating such offences, or strengthening and adapting provisions that foresee similar offences in substantive legislation, will allow criminal law to attack the organizational structure of the organized crime groups perhaps even more than the crime of conspiracy alone could do. Experience in applying these two types of offence has had a very positive influence on the fight against organized crime in both Italy and the United States. In the Italian experience, the offence of participation in an "organized crime association" has been decisive in successfully prosecuting and convicting many Mafia bosses in the first "maxi-trial" against the Mafia in Sicily. In the United States, the RICO statute is generally considered to be the starting point of a new process of awareness of organized crime by the United States Government and its criminal justice system. Its effectiveness has been demonstrated in the many

indictments and convictions of members of organized crime groups that have resulted since the legislation was passed.

95. The Mutual Legal Assistance Treaty signed between Italy and the United States in 1984 has been, according to both sides, a powerful instrument for attacking the international expansion of Italian organized crime groups in the United States and their collusive relationships with the American Cosa Nostra. In the same way, mutual legal assistance treaties between Italy and other European countries owe a great deal of their effectiveness to the fact that they start from this typology of crime.

96. Legislation on control of the proceeds of crime is another issue that requires attention. The process initiated by the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988 ((E/CONF.82/15 and Corr.2) has gone through a series of important international interventions, such as the 40 recommendations of the Financial Action Task Force on Money-Laundering and of other intergovernmental organizations such as the Council of Europe's 1991 Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, the European Commission Directive of the same year and the Organization of American States' recommendations for Latin and Central America. International cooperation and concerted global actions would benefit greatly from the consolidation, extension and improvement of this process.

97. Harmonization of anti-money-laundering legislation is a powerful tool, which can equalize the risk among countries where criminals attempt to launder the proceeds of their crimes and to invest them. Once they find a loophole in the legislation of some country, they are quick to exploit it. Dealing with this requires not only the introduction of the crime of money-laundering, but also every possible effort, through the instruments of criminal law, to ensure that financial and non-financial institutions comply with the duties assigned to them by numerous regulations, especially regarding the reporting of suspicious transactions. If the legislation foreseeing sanctions for failure to report these transactions were more compatible, it would increase the protection offered to financial systems and would consequently foster more effective action while providing world financial markets with a safe environment in which to grow.

98. The introduction of money-laundering as an offence, however, may not, by itself, be enough. The experience of its implementation in countries that have linked the money-laundering crime to the predicate offence of drug trafficking reveals serious limitations. The exclusive link of money-laundering to drug offences has limited the capacity of financial institutions and law enforcement agencies to begin a greater number of investigations and to cooperate in cases transcending borders. Extending the predicate offence to "all serious crimes" should be the starting point for equalizing law enforcement risk among countries and lend force to international cooperation.

99. Another area where it is essential that there be a consistent and strong commitment on the part of countries to make their legislation against transnational crime compatible is the internationalization of corruption. There is a growing realization of the need for more coherent and consistent international anti-corruption action. Recent recommendations by the Organisation for Economic Co-operation and Development provide guidelines for harmonizing national legislation for combating international corruption. Providing equal criminal treatment for domestic and international corruption is a matter of urgency. Therefore, countries should introduce into their domestic legislation measures such as the abolition of fiscal advantages that encourage domestic enterprises to corrupt foreign officials, and punishment for the corruption of foreign officials.[12]

100. Corruption is the bridge between economic and organized crime and it should be treated as a very serious threat. Corruption is usually accompanied by violence and these are the two methods organized

crime groups use to penetrate legitimate activities. Corruption is often the substance of other crimes, such as fraud committed by an enterprise to pay bribes and money-laundering crimes.

101. The quantity and quality of sanctions are often used as criteria for quantifying the "law enforcement risk". As incarceration and confiscation of the assets are the two types of sanction that can disrupt a criminal organization, it is extremely important that the definition of these sanctions, their implementation and their perception by organized crime groups are as homogeneous as possible in different countries. Obstacles to convergence of the type and quantity of sanctions stem from divergent cultures and structures of criminal justice philosophies. The length of imprisonment, for example, may differ substantially from one country to another, as well as the balance between protection of human rights on the one hand and security considerations on the other.

102. In contrast, asset forfeiture and seizure are effective sanctions that could easily be made compatible. Legislation in this area is relatively new and its key provisions should not be difficult to harmonize. Laws that provide for asset-sharing among countries that have participated in the same law enforcement operation are a powerful instrument in the hands of the law enforcement system. Although these laws may have encountered some problems, the experience in drug cases has nevertheless been a positive one and has been successful in soliciting cooperation between law enforcement agencies of different countries, thereby demonstrating that those laws are powerful instruments of international cooperation.

103. The structural difference between the procedural law of countries where the inquisitorial or accusatory system prevails have not proved to be an obstacle to international cooperation between them. The experience of mutual legal assistance treaties between countries with different systems has shown that mutual legal assistance in criminal matters is possible despite such differences. The same could be said for the differences between systems characterized by mandatory criminal action on the one hand, and discretionary power on the other hand.

104. These differences, however, may be irrelevant in terms of law enforcement risk for crimes committed by organized crime groups. It is possible that, in cases where law enforcement capabilities are weak, the inquisitorial system can be more useful because it produces evidence before the trial takes place at which the evidence is going to be discussed. In this sense, it can be said that the system is more "rigid", and there is no room for the criminals to influence the course of the proceedings.

105. The capacity of organized crime to intimidate those giving testimony can play a significant role in weakening the evidence discussed in trial. But this, and other side effects of the different systems that can be relevant in situations of threat against criminal justice systems, should be solved on a contingency basis without changing the principle of the parity of the parties in a trial.

106. The main problem in procedural law is that the methods for collecting evidence need to be made compatible in order to produce an equivalent quantity and quality of risk among countries. Domestic legislation, for example, may make use of modern techniques for tracing criminals and collecting evidence on their operations and on the organization itself. A reasonable balance can be found between the protection of privacy and the need of the law enforcement agencies to collect evidence through, for example, wiretapping and interceptions of telephone communication and electronic surveillance. Legislation providing for such methods, together with other law enforcement methods, such as undercover operations and controlled delivery, should be passed to enable law enforcement agencies to collect sufficient evidence to prove guilt beyond any reasonable doubt.

107. Another issue of high priority in the effectiveness of action against organized crime, and in the perception of organized crime groups of high risk, is the cooperation of witnesses and defendants with

the law enforcement authorities. The experience of countries where the organized crime risk is high proves that intimidation and violence against witnesses and cooperative defendants is resorted to because these figures play an essential role in providing information on the structure of the group and its activities. Legislation and programmes for offering protection and assistance to cooperative witnesses and their relatives should therefore be an integral part of policies in each country that is having to deal with organized crime.

108. It is also essential to provide these people with a change of identity and to relocate them during and after the trial. Financial assistance, when possible, helps to overcome the difficulties they face as a result of cooperating with the criminal justice and law enforcement system.

109. As already mentioned, legislation allowing the use of new means of law enforcement, such as electronic surveillance and undercover operations, in order for the investigation to be effective and keep pace with the continuous evolution of technology, requires that these operations be conducted with a high level of professionalism, to equalize the risk among different countries. Professionalism among law enforcement agencies requires not only appropriate qualifications and training but also organization, coordination and resources.[13]

110. The question of resources, and whether they can ever converge (always in relation to their investment in the criminal justice system) is, of course, perhaps the most salient issue. The factors involved include budgetary problems and priorities in general and in the different areas of the criminal justice system. The same can be said for coordination among different law enforcement agencies. It is universally recognized that close coordination improves effectiveness, but it is part of the daily experience of many countries that coordination among law enforcement bodies is difficult to achieve and to maintain. Similarly with the issue of organization, centralized or decentralized patterns of organization respond to cultural, traditional and managerial criteria that cannot be harmonized. Each country should find the best organizational solution, based on its own pattern, trying to make its actions as efficient and effective as possible. The matter could, however, be approached from a different perspective. Technical assistance could assist greatly in securing the convergence of resources. The provision of expert knowledge and experience through advisory services and training to countries in need would raise the level of response to the problem of dealing with organized transnational crime. Even if the quantity of resources does not increase significantly, particularly in countries with severe budgetary problems, the quality of such resources, especially human resources, will rise to appropriate levels.

IV. CONCLUSIONS AND RECOMMENDATIONS: AN AGENDA FOR INTERNATIONAL COOPERATION

111. Having examined how, after bilateral cooperation, regional and international cooperation can, in turn, help to secure an effective convergence of national policies against organized crime, and having identified the cases in which compatibility of policies could increase the law enforcement risk for organized crime groups, thereby making it more difficult for them to internationalize their activities, the next step is to draw up an agenda for international cooperation.

112. The first step towards convergence should be achieved through regulatory and crime control legislation, establishing under domestic law, policies of demonstrated effectiveness that do not generate problems of compatibility where the legal systems differ, but that actually facilitate cooperation between countries. The second step should be the enhancement of law enforcement capabilities in terms of professionalism and technology.

113. In any agenda for international cooperation the regulatory measures necessary to obtain maximum transparency of financial systems and to prevent monopolies should not be neglected.

114. Consideration is to be given to specific offences for crimes committed by criminal organizations. These could be membership in a criminal organization or participation in the affairs of a criminal enterprise, or other forms of conspiracy especially directed at the organizational aspects of the crimes committed.

115. Furthermore, measures should be addressed to the proceeds of crime, for example by enacting legislation that provides for forfeiture and confiscation of the assets of criminal origin, possibly including provisions for asset-sharing among countries participating in the same law enforcement operation. Introducing the criminal offence of money-laundering and extending it to the activities of laundering and investing proceeds of all serious crimes would be an essential step. Intentional omission or failure to report suspicious transactions on the part of banks and non-banking financial institutions could also be considered a criminal offence.

116. Other proposals that could be discussed and evaluated include increasing the severity of the offence in cases of crimes of domestic and international corruption, removing all financial and economic advantages of domestic enterprises obtained by corrupting public officials abroad, and extending the crime of corruption to the corruption of foreign public officials by national enterprises. This is particularly important in view of their great potential usefulness in mutual law enforcement assistance.

117. The agenda could also include the introduction of legislation allowing law enforcement agencies to conduct wiretapping, electronic surveillance and undercover operations. The ability of criminals to exploit high technology resources has to be matched by at least an equivalent law enforcement action. It is therefore essential to provide law enforcement agencies with the minimum required technology for wiretapping and electronic surveillance, together with standardized software for databases to be used for tactical and strategic intelligence.

118. The levels of sophistication reached by transnational criminal organizations in dealing with financial schemes means that the law enforcement agencies must be provided with specific training to deal with financial investigations.

119. The first and second steps require substantial international cooperation. Technical assistance programmes coordinated multilaterally and implemented both multilaterally and bilaterally, through different approaches, can provide the means of equalizing the law enforcement risk among countries as much as possible. These programmes must be coordinated if they are to produce effective results with greater cost efficiency. Regional or country-specific masterplans should be formulated, paying careful attention to the different needs of countries.

120. Any assessment of needs should not only consider the lack of policies and resources for achieving the points established in this agenda but should also assess the degree of flexibility of the juridical system where these policies are going to be applied. This would avoid possible rejection by the criminal justice system because of problems of internal compatibility. Convergence is a lengthy process and can only be achieved if there is a clear awareness of the initial differences that have to be decreased or accommodated.

121. International cooperation against organized transnational crime, which not only disregards the power and authority of the law but, as one of the main characteristics of its modus operandi, systematically breaches it, should be based on the collective feeling and understanding of the phenomenon from all those who belong to the community of nations.

122. In a certain sense, the pervasiveness of organized transnational crime may be compared to the threat from the deterioration of the environment or, even better, from the uncontrolled use of nuclear power. In 1986, at the time of the Chernobyl disaster, the world was forced to come to terms, for the first time ever, with the true extent of the dangers posed by a neglected activity, one which, because of its inherent volatility, might not be confined to borders that existed only on maps. Just as the repercussions of that explosion affected the people and environment of more than one country, the international community can no longer overlook the dangers of organized transnational crime, which is not hindered by national borders, and even profits from them because the borders may actually obstruct the rule of law.

123. To come to a common understanding and to collaborate in the fight against transnational organized crime does not mean that the distinct aptitudes and juridical cultures existing within the international community should be ignored. Nor does it mean endangering the sovereignty of States. On the contrary, since that sovereignty is challenged by criminals operating in a systemic fashion, the response to them needs to be structured and collectively shared.

124. The United Nations, because of its general mandate and international constituency, provides an appropriate forum in which a common understanding and global action can be promoted. Starting with the general need for exchanging information on organized crime patterns, on legislative provisions and on organizational structures of individual countries, the United Nations has been given a special responsibility to improve countries' capacities to combat this scourge, by enhancing the development of technical cooperation with countries in need of assistance.

125. Certainly, international cooperation will only be possible if the factors limiting it are eliminated. Among these factors, the lack of relevant cooperative arrangements emerges as the first problem, particularly in reference to extradition and mutual assistance in investigation and the gathering of evidence. The elaboration of new agreements providing for adequate assistance in combating organized crime, as well as the improvement and updating of existing treaties, would rapidly lead to the creation of a network of legal instruments that would make it possible to avoid delays or misinterpretation when assistance was sought. In this light, the United Nations model treaties could serve as a basis for the initial exercise. Of course, since the nature of organized crime is multiform and unpredictable, those models may have to be adapted to the various settings where they will be applied.

126. In cases in which transnational organized crime targets developing countries or countries in transition and their economic, political and social order, technical cooperation becomes essential for providing assistance in drafting penal laws appropriate for fighting organized crime, as well as in training law enforcement personnel, who will be called upon to apply new legislation and instruments and to cooperate with enforcers from other countries.

127. The higher the degree of consistency of these arrangements with both domestic realities and the tools available in other countries, the more effective international cooperation against transnational organized crime will be. Needs assessment may therefore be the preliminary step for further action by the United Nations, and other international organizations engaged in this area. Nevertheless, assistance also means financial and economic aid, with sufficient resources provided for technical cooperation activities.

128. Although there is no shortage of measures to be implemented, it is worth highlighting the importance of pursuing the goals step by step, without trying to target a prey that is unreachable. In other words, any discussion on sensitive issues, such as those concerning matters of domestic and international security, could be approached rationally and pragmatically.

129. The high-ranking participants in the World Ministerial Conference are well aware of the urgent needs and constraints of many countries, and have a unique opportunity to set up a programme for concerted action to strengthen regional and interregional cooperation. By taking into consideration national concerns regarding the consequences of organized crime, it is hoped that the Conference will be able to devise a more effective global strategy, building upon the statement of principles and pro-gramme of action adopted by the Ministerial Meeting on the Creation of an Effective United Nations Crime Prevention and Criminal Justice Programme (General Assembly resolution 46/152, annex), and adding a new decisive chapter to the history of international cooperation against organized transnational crime.

Notes

[1]See Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Caracas, Venezuela, 25 August-5 September 1980: Report Prepared by the Secretariat (United Nations publication, Sales No. E.81.IV.4).

[2]See Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Milan, 26 August-6 September 1985: Report Prepared by the Secretariat (United Nations publication, Sales No. E.86.IV.1), chap. IV, sect. A, para. 66.

[3]Ibid., chap. I, sect. A.

[4]Ibid., para. 6.

[5]See Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August-7 September 1990: Report Prepared by the Secretariat (United Nations publication, Sales No. E.91.IV.2), chap. IV, sect. C.

[6]Ibid., chap. I, sect. C.

[7]Official Records of the Economic and Social Council, 1992, Supplement No. 10 (E/1992/30), chap. I, sect. C, resolution 1/2.

[8]Official Records of the Economic and Social Council, 1994, Supplement No. 11 (E/1994/31), chap. I, sect. C, resolution 3/2.

[9]See Muller-Rappard and Bassiouni, European Inter-State Co-operation in Criminal Matters, 2nd ed., 1993.

[10]Report of the Secretary-General on the strengthening of international cooperation in combating organized crime (A/47/381).

[11]C. Van den Wyngaert, "The political offence exception to extradition", in Acts of the International Seminar on Extradition (Siracusa, Italy, 4-9 December 1989); see also C. Van den Wyngaert, "Rethinking the law of international criminal cooperation", in Principles and Procedures for a New Transnational Criminal Law (Eser & Lagodny, eds., 1992).

[12]P. Bernasconi, "The necessity for an International Convention Preventing and Combating the Corruption of Public Officials", Rivista Trimestrale di Diritto Penale dell'Economia, vol. VI, No. 4 (1993), p. 1138.

[13]On the question of professionalism and the need for adequate coordination, see G. Falcone, Cose di Cosa Nostra, chap. VI, Potere e Poteri (Rizzoli, 1991).

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THE FEASIBILITY OF ELABORATING INTERNATIONAL INSTRUMENTS, INCLUDING CONVENTIONS, AGAINST ORGANIZED TRANSNATIONAL CRIME

Background document

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INTRODUCTION

1. The present report is designed to afford an overall appraisal of prospects for international cooperation in the struggle against transnational organized crime - and in particular to consider whether it is feasible to elaborate international instruments, including a convention against transnational organized crime. It bears reiterating that the ultimate objectives of international cooperation are to ensure: (a) that transnational criminal organizations encounter a high level of risk whatever home country they operate from and in whatever host countries they transact business; (b) that legitimate industries can offer strong resistance to efforts at infiltration and takeover by transnational organized crime; (c) that Governments, the commercial sector, and the criminal justice system are resistant to corruption and violence by transnational criminal organizations; and (d) that the activities of transnational criminal organizations are gradually circumscribed and ultimately eliminated.

2. Therefore, the overall goals are to make the environment for transnational criminal organizations hostile and inhospitable, to infiltrate, disrupt, and destroy the network structures on which many of these organizations are based, and to make continued transnational criminal activities as difficult and as costly as possible.

3. Other background documents submitted to the Ministerial Meeting have concentrated on the rationale for cooperation, the content of cooperation and the steps that have to be taken to promote greater harmonization of national legislation. The emphasis here, in contrast, is on the form of cooperation and, in particular, on the relative merits of bilateral and multilateral approaches in moving towards a regime that will be hostile to transnational organized crime.

4. Although each form of cooperation has its strengths and its weaknesses, bilateral and multilateral approaches are not mutually exclusive. While there are important differences of emphasis between them, each contributes in important ways to more vigorous criminal justice systems and a more effective law enforcement environment to deal with the threat from transnational criminal organizations. For the most part, bilateral, regional, and global approaches can be regarded as overlapping strategies that generally complement each other. Indeed, a multilevel approach of this kind tends to have a synergistic effect, especially when such cooperative ventures feed back into the national level and encourage States to develop domestic law that is consistent with the obligations they have accepted internationally.

5. There are rather different assumptions underlying bilateral cooperation on the one hand and multilateral cooperation on the other - especially when an effort is made to engage in global forms of multilateral cooperation. The bilateral approach is based on what might be termed an evolutionary model of cooperation, in which there is a gradually thickening web of bilateral linkages. The process is an incremental one, involving careful consolidation and gradual extension of the norms, mechanisms, and instruments of cooperation. The thickening web of bilateral cooperation works from the bottom up; the approach is deeply rooted in notions of the feasible and the practical. The ultimate goal is not ignored, but there is a clear recognition that it will take a long time to reach it. Underlying bilateral approaches is the belief that the best way to proceed is by building on convergent interests between two States with similar problems and a similar level of commitment to meeting them. Effectiveness is largely a matter of will and this is best manifested when States are determined to engage in intense and sustained cooperation to meet their common goals. At the same time, the existing bilateral mutual assistance and extradition treaties and various other forms of assistance offer a model of what might be done on a more ambitious scale.

6. At the other extreme there is what might be termed a comprehensive approach to international cooperation. It is based on the logic that the challenge is a global one; consequently the best response

is also one that is extensive in scope, multilateral in form and, as far as possible, global in reach. Moreover, there is an urgent need to bring a higher degree of order to a situation that may look like "a rather untidy mix of global, regional, and bilateral arrangements, established without a great deal of thought given to the overall pattern".* A multilateral approach would help to rectify this. Cooperation has grown up in incremental steps and without any overall design, but is now at a point at which the process requires some planning and regularization, in particular through more comprehensive and long-term approaches, such as the formulation and implementation of a convention against transnational organized crime. The key assumption of the multilateral approach is that drastic problems demand far-reaching responses. And like most attempts at international reform, this approach confronts the traditional emphasis on the concept of national sovereignty. The real issue, however, is not the loss of sovereignty but whether States are prepared to sacrifice some of the formalities of sovereignty in order to prevent the real erosion that is taking place as a result of the activities of transnational criminal organizations. Like most visionary schemes, the multilateral approach focuses upon the end result and proposes the shortest and most direct route for reaching it. It is, in effect, a top down approach that is aware of the problems and difficulties but acknowledges a compelling logic that provides the impetus to overcome these.[1]

7. Although the most ambitious multilateral schemes tend to have a sense of global vision, this is not invariably the case with multilateralism. Some multilateral schemes are regional in scope. Efforts to create a "common judicial space" in regions such as Latin America and Western Europe, for example, offer an intermediate option. This more modest form of multilateralism attempts to extend bilateral cooperation to somewhat larger groups of like-minded States facing similar regional challenges from transnational organized crime. Although there is a recognition that the difficulties of cooperation often increase according to the number of States involved, this tends to be less of a problem where the States involved already have some kind of regional identity.

8. Against this background, the aim in this report is to examine the merits and shortcomings of bilateral and multilateral cooperative strategies in more depth. Section I looks at examples of bilateralism and offers an assessment of both the strengths and the weaknesses of this form of cooperation. Section II looks at multilateral approaches at the regional level, while in section III more ambitious forms of multilateral cooperation are considered, such as the elaboration of a possible convention against transnational organized crime. In section IV the main elements of such international instrument are outlined, not as a definitive proposal, but rather as a basis for discussion and further thought. Section V sets out some concluding comments on international cooperation directed against transnational criminal organizations.

I. A THICKENING WEB OF BILATERAL EFFORTS

9. Considerable progress has been made in the effort to internationalize and harmonize law enforcement efforts. Largely a reaction to the emergence of illicit drug trafficking as a global industry, this cooperation needs to be developed further in response to the increasingly diverse challenges posed by transnational criminal organizations.

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*The comment was made about police cooperation but has wider applicability. For the argument itself, see Malcolm Anderson, Policing the World: Interpol and the Politics of International Police Cooperation (Oxford), Clarendon Press, 1989), p. 33.

10. One way to achieve this is through the more vigorous pursuit of bilateral cooperation. There are many examples of such cooperation already in place, and more agreements are being signed every year. In addition, States are attempting to broaden the scope of their mutual assistance treaties. In January 1994, for example, the United Kingdom of Great Britain and Northern Ireland and the United States of America signed a Mutual Legal Assistance Treaty enabling each side to ask the other to search for and seize the proceeds of serious crime, including drug trafficking, to take statements from witnesses, provide documents and records, and transfer prisoners temporarily when they are to give evidence.

11. Efforts have also been made to provide assistance to the States in transition in Eastern Europe. Germany has signed treaties with the Czech Republic, Poland and Slovakia on cooperation in the suppression of organized crime. Russia too has been the recipient of considerable assistance, much of it bilateral, but some of it multilateral and coordinated through the Crime Prevention and Criminal Justice Branch of the United Nations Secretariat. Indeed, one of the virtues of a bilateral forum is its flexibility: it is a form of cooperation which, even when it may be asymmetrical, could incorporate assistance to improve the balance between the countries concerned. It is also a form of cooperation in which there can be a very high degree of reciprocity.

12. A particularly good example of highly reciprocal bilateral cooperation - and one that has yielded very substantial dividends - is that between the United States and Italy. The United States-Italian Working Group on Organized Crime and Narcotics, formed in 1984 (extended to incorporate terrorism in 1986 and subsequently broadened to include Canada as an observer), is a model example of extensive bilateral cooperation. Indeed, "because of the new instruments - particularly mutual assistance treaties - legal barriers to the exchange of investigative material, including grand jury information and information collected by foreign authorities otherwise covered by the secrecy of the investigating magistrate, were eliminated, and it became possible to work together in ongoing cases".[2] This cooperation contributed to the disruption of the narcotics network established by the United States and Sicilian Mafias - the "Pizza Connection" - through an operation "in which law enforcement officers in Brazil, Canada, Germany, Italy, Spain, Switzerland and the United States all worked in concert for nearly a year, arrested more than a hundred individuals, and conducted an equal number of searches on a single day. In that same case, two Sicilian Mafia members, Tommaso Buscetta and Salvatore Contorno, cooperated with both the United States and Italian authorities and provided testimony in trials in both countries. That joint testimony tested the limits of each system, which have very different rules regarding immunity agreements, pre-trial disclosures and cross examination. Because of the new treaties and a desire to work together, those differences were successfully bridged".[3]

13. The case was indeed impressive for the degree of cooperation achieved not only at the prosecutorial level but also at the investigative level. Electronic surveillance was used to follow targets as they moved from one country to another. In addition, it proved possible to follow the money trail. More recent successes in a similar vein have included Operation Green Ice, an undercover money-laundering operation that revealed the links between the Sicilian Mafia and the Colombian drug cartels.

14. If law enforcement cooperation between Italy and the United States has been extremely successful, there are several factors that help to explain this: (a) both States had very similar assessments of the drug trafficking and organized crime problem and gave it a high priority; (b) both States had long experience in responding to organized crime at a domestic level and it was not too difficult to switch to a response at the international level; (c) cooperation involved not just a formal agreement, but sustained cooperation to implement that agreement. This gave it a dynamic quality and provided an opportunity for the two countries to display their mutual commitment to overcoming the inevitable problems and difficulties that arose; (d) it was a very tightly focused form of cooperation with specific aims and objectives and particular targets; and (e) the Working Group was chaired by the United States

Attorney General and the Italian Minister of the Interior, who has the responsibility for law enforcement in Italy. High-level involvement of this kind is crucial to keeping the group focused and to ensuring that agencies in both countries are receptive to the demands of cooperation.

15. These conditions are not always easy to replicate. Most other States have far less experience in dealing with organized crime at either the national or transnational level and therefore may not perceive the need for the depth of mutual commitment exhibited by Italian-United States cooperation. Consequently, not all bilateral agreements work so effectively or have such positive and beneficial results. In some cases, for example, asymmetry in law enforcement capabilities or asymmetrical commitments to cooperation can lead to a sense of frustration and disappointment.

16. These caveats notwithstanding, it is clear that bilateral cooperation can have very positive consequences in terms of law enforcement cooperation. If it does start to work effectively, however, bilateral cooperation can become a target for the transnational criminal organizations themselves. The Colombian cartels for example, did everything possible to disrupt bilateral cooperation between Colombia and the United States - especially after the 1979 Extradition Treaty. In effect, this Treaty meant that United States law enforcement capabilities could be used to compensate for the difficulties Colombia faced in prosecuting leading members of the cartels. The extradition of Carlos Lehder highlighted the dangers to other "kingpins" of the drug trade being unable to find safe havens. The reaction by the cartels was ferocious largely because the instrument of cooperation was effective.

17. Bilateral cooperation, with its incremental approach, has some real strengths. In particular, it is a highly flexible strategy that can be tailored to what the States involved see as their specific needs and objectives. Furthermore, the commitment of States to implementing the accord is likely to be stronger: each State has a very clear obligation to its partner and the obligation is precise rather than diffuse. And so long as attention is given to implementation, then bilateral cooperation can be enormously effective.

18. At the same time, there are some limitations or shortcomings associated with bilateral extradition and mutual assistance treaties. In the first place, although the web of bilateralism is gradually thickening, major gaps remain. Furthermore, the whole could prove to be less than the sum of its parts: there is an ad hoc quality about this form of cooperation that produces inefficiencies, lacks of coordination and overlapping when looking at it from an overall perspective. Another problem is that bilateral cooperation is consuming of both time and resources. It is especially difficult for smaller States, which have neither the resources nor the expertise to engage in multiple bilateral negotiations, to develop the instruments of cooperation. Even though the provision of model treaties makes this task somewhat easier, the lack of resources is likely to remain a powerful inhibition. The implication is that, although the web of bilateral cooperation will continue to thicken, it needs to be complemented by multilateral forms of cooperation.

II. MULTILATERAL COOPERATION AND REGIONAL INTEGRATION

19. Multilateral cooperation should not be seen simply as a compromise between various bilateral efforts. Rather, it is something that has significant benefits in its own right, as many regional arrangements have demonstrated. They can be understood as the criminal justice counterpart to the growth of economic and political integration in particular regions, such as Western Europe. Regional cooperation in judicial and criminal matters is the natural concomitant to efforts to achieve political and economic union, even though it involves some of the more sensitive and complex aspects of national sovereignty. In this sense, it can be understood as a spin-off (or spill-over) from broader political and economic processes - albeit based on the recognition that complete uniformity of national legislation is

neither feasible nor desirable. As has been observed, "The criminal law systems are all finely tuned to the specific characteristics of the different countries. This delicate equilibrium should not be disturbed, unless a substantial advantage is to be gained."[4] At the same time, regional cooperation is also an acknowledgement that something needs to be done in response to the increased regional vulnerabilities accompanying the opening of internal borders and the development of the single market.

20. Regional cooperation is also based on the recognition that, although transnational organized crime is a global problem, it takes different forms in different regions and countries. Indeed, a strong argument can be made that regional problems demand regional responses. This does not mean that such a response is a substitute for national legislation or global approaches. It is simply that the States of a particular region may face a relatively homogeneous challenge, which provides the basis for a concerted approach.[5] This may be the case in Europe, where there is increasing awareness of the threat posed by various criminal organizations. Indeed, the more overt the threat, and the more widely shared the threat assessment, the greater the prospects for a vigorous programme of cooperation.

21. There have already been some very positive regional initiatives, which have extended the bounds of cooperation beyond the purely bilateral.[6] These include the Council of Europe's Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime.[7] This Convention contains far-reaching provisions allowing the signatories to criminalize laundering of the proceeds of non-drug-related crime. It was also extended beyond Europe to facilitate participation by countries such as the United States and Australia, which are not members of the Council but helped with the drafting of the Convention.

22. Another, more modest, regional initiative is the Caribbean Financial Action Task Force. As a result of the Caribbean Conference on Drug Money Laundering, held at Aruba from 8 to 10 June 1990, a series of recommendations for taking action against money-laundering was formulated. Some countries, however, have proved reluctant to take further action, not least because of the benefits they receive as tax havens, and progress has generally been slower than was initially anticipated.

23. More significant is the work of the Inter-American Drug Abuse Commission (CICAD) of the Organization of American States, which has initiated an action programme against the production and use of illicit substances and has adopted model legislation on money-laundering,[8] based largely on the recommendations of the Financial Action Task Force established by the Heads of State or Government of the Group of Seven major industrialized countries and the President of the European Commission of the European Union.

24. These efforts to achieve common judicial and security spaces, at least in relation to certain sectors of criminal activity such as drug trafficking and money-laundering, have their own logic.[9] At best, regional initiatives of this kind are relatively easy to formulate and implement, as the States in the region have a broad convergence of interest and relatively homogeneous needs and problems. On some occasions, however, as in the case of the Financial Action Task Force of the Group of Seven countries, the impulse for cooperation is evident in economic and political groupings that exceed the geographical contiguity of land borders. Once again, however, these States have similar needs and problems, which have enabled them successfully to develop a common approach in the area of international money-laundering.

25. These complementary, reinforcing initiatives provide an important supplement to bilateral cooperation. They are incremental exercises in multilateral cooperation, which in some cases seem to provide a useful framework for effective action against transnational criminal organizations. At the same time, under their influence, international cooperation against transnational organized crime takes on even

more of the quality of a patchwork quilt, put together without any coherent design. Moreover, they only deal with particular segments of criminal activity and do not deal with the whole range of illicit actions and transactions perpetrated by transnational criminal organizations.

26. It is nevertheless clear that multilateral arrangements of this kind "offer numerous advantages, not the least of which is that they may obviate the need to negotiate individual bilateral arrangements with large numbers of foreign governments".[10] Negotiation is relatively easy for large States with highly developed administrative structures; but, as suggested above, for smaller States with limited resources and expertise, multilateral instruments or forms of cooperation are much more cost-effective. They are also particularly useful where Governments are hostile or political relations inhibit direct bilateral cooperation. While political and ideological hostility is much less of a problem now that the cold war has ended, multilateral cooperation continues to offer opportunities for cooperation that simply would not be possible at the bilateral level. An additional advantage of multilateral cooperation is that it is less likely to be a target for counterattacks by organized criminal groups.

27. These advantages of multilateral cooperation should be viewed in conjunction with the patterns of ad hoc bilateral cooperation and what might be termed sectoral cooperation at the regional level.

III. TOWARDS A CONVENTION AGAINST TRANSNATIONAL ORGANIZED CRIME: DESIRABILITY AND FEASIBILITY

28. In considering the prospects for a convention against transnational organized crime designed to go beyond a regional approach and encourage global application, several problems should be kept in mind.

29. The first difficulty with such a new instrument is its content. Similar conventions on terrorism and drug trafficking have been oriented toward a specific typology of crime. The question arises, therefore, whether a new international instrument on organized crime should cover the many crimes that transnational criminal organizations or domestic organized crime groups commit, or should focus on the way in which countries should respond to the threat posed by these organizations. The problem with concentrating on the crimes is that they are so extensive - and it is difficult to be all-embracing. The implication is that attention should be focused on the second aspect, that is the responsibility of Governments to respond vigorously to the challenge, building upon the experience developed in the process of elaboration, ratification and implementation of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988 (E/CONF.82/15 and Corr.2) and starting from the already existing proposals on legislation and law enforcement methods covered in the Convention itself. The extent of international support for the Convention is extraordinary: over 100 States are parties to it. This Convention, thanks to the commitment and political will of such a large number of countries, has had a major impact in bringing about concerted action against drug trafficking.

30. One of the inherent difficulties with multilateral cooperation, as manifested in the development of instruments of the kind being discussed here, is the achievement of consensus. In effect, breadth of participation must not be achieved at the expense of depth and intensity of cooperation and it is essential to ensure that negotiation does not result in a diluted convention that falls short of establishing the provisions necessary for an effective response to transnational criminal organizations. What is needed now, actually, is a framework for international cooperation, within which States could proceed with bilateral cooperation in a more systematized and effective way. Such a framework would make it possible to bridge the gaps inherent in bilateral cooperation. For example, the Vienna Convention has given rise to a wave of legislative activity at the national level, supported by the legal assistance

programme of the United Nations International Drug Control Programme, as well as to the adoption of numerous bilateral and regional agreements that implement and further the Convention's provisions in fields of cooperation.

31. Another closely related problem inherent to multilateralism lies in the fact that it is far from clear precisely how multilateral the activities resulting from the convention would really be, especially where there are divergent assessments of the challenge. In one sense, a multilateral convention would provide a way of augmenting resources and mobilizing mutual support and assistance for what individual States are unable to do alone. It should however be underlined that multilateral responses to global problems can only work if each party makes sacrifices commensurate with those of others.

32. Avoiding this kind of obstacle requires not only a broad consensus on what needs to be done to carry on the fight against transnational criminal organizations but also a commitment to take whatever action is necessary, despite the cost. In the context of a convention, there are two dimensions: if it is to be effective, it needs States to join and subsequently to exhibit the will and capability to meet their obligations under the convention.

33. Nonetheless, if the consolidation of various instruments into an international convention against transnational organized crime may not meet with universal approval, some of the reasons can be found in the obstacles to cooperation that have already been discussed, combined with an innate conservatism. As has been noted: "Only if most countries were willing to re-examine some deeply entrenched legal procedures, and to recognize that their own traditional way of doing things was not necessarily the best or most effective approach to the problems in question, would the concepts of multilateral extradition and mutual assistance conventions become a reality."[11]

34. The elaboration of a new instrument could be linked to the establishment of an effective and reliable system for collecting information, sharing it at the global level and analysing it as a guide for more decisive action. Transnational organized crime operates secretly because of the very nature of its illicit activities. As a consequence, collecting data becomes very difficult. International action against transnational criminal organizations based only on assumptions and reports cannot, however, suffice. Better and more reliable indicators, to be universally adopted and used in reporting, are urgently needed. The possibility of an international clearing-house to collect and share more reliable information should also be looked into as a very valuable means of complementing international action.

35. It is true that the exchange and processing of electronic data have recently created a potential for greater harmonization of data collection systems, but they have also highlighted the differences in national reporting systems. The necessary financial and human resources are not always available to comply with the various international reporting requirements. However, data collected through questionnaires are often not the most recent, as the gathering process is quite lengthy. As there is still a gap between the tasks that lie ahead and the goals that have been attained, the international community should make special efforts to provide the necessary feedback and support in the collection, analysis and dissemination of reliable and timely information on the incidence, expansion and effects of organized transnational crime.

36. The elaboration of an international convention against transnational organized crime would bring other advantages too, representing an invaluable potential for universal adherence. First, the very act of negotiating a convention would have certain benefits. For example, it would focus attention on the problem. Although specific criminal organizations, such as the Colombian cartels and, more recently, the Russian organized crime groups, have been given considerable attention, the emergence of transnational criminal organizations as a generic threat posing problems in many respects exceeding

those of international terrorism has been relatively ignored. Indeed, there has been a paucity of both journalistic and scholarly analyses dealing with transnational criminal organizations and their activities as a problem faced not only by individual States but also by the international community as a whole. Negotiating a multilateral convention with global applicability would do much to rectify this. Indeed, a convention on transnational organized crime would be very important in symbolic terms, as it would represent the collective judgement of the international community that the problem has become sufficiently serious to demand concerted action in response. This could also have an important impact in terms of legitimizing national actions, including national legislation against the activities of transnational criminal organizations. In addition, the negotiation of a convention would lead to greater interaction among Governments and particular ministries in ways that could themselves lead to enhanced cooperation. Developing a knowledge of other negotiators can be important, particularly if these negotiators also have some role in the subsequent implementation of policy. Lastly, the negotiation process itself would help to identify the areas of consensus on the problem, its dimensions, and the main strategies for responding to it.

37. Secondly, once the convention was in place, it would have several positive effects: (a) it would provide a set of standards and expectations that the signatories would have an obligation to live up to. In a sense it would facilitate the exertion of peer pressure as a common effort of the international community in addressing the problem; (b) it would have an important regularizing effect and provide for a more standardized form of cooperation than does the extension of bilateral accords, each of which has its own distinctive features; (c) it would facilitate more systematic assistance in the areas of criminal justice and law enforcement, rather than the existing ad hoc approach; (d) it would provide guidance for a programme of implementation that would assist in the dual objectives of harmonizing law enforcement risk and making it more difficult for transnational criminal organizations to infiltrate legitimate business.

38. It is clear from the above that there are both advantages and disadvantages to a multilateral convention against transnational organized crime. The issue is not clearcut. If Governments do decide that the advantages outweigh the disadvantages, however, there are several other requirements that would have to be met to transform it from a theoretical possibility into a feasible and practical proposition. First, it would require a broad-based consensus on the seriousness of the challenge posed to nations and to the international community by transnational criminal organizations. A consensus of this kind appears to be developing - as is evident in the widespread (although still far from universal) adoption of regulations directed against money-laundering. The key to broadening this consensus is for Governments that are affected by transnational criminal organizations to recognize that they are not alone, and for Governments that are not currently the target of transnational organized criminal activity to understand that they are not immune, and that it may be only a matter of time before the problem impinges on them directly. Secondly, another crucial requirement is that the idea of elaborating a convention should have the unequivocal backing of most States. The more diverse this group of States is, the better, on the understanding that the convention should not be seen as an attempt by any particular grouping to impose required forms of behaviour on others with different levels of economic development or cultural traditions. The willingness of several highly committed States to give a high priority to successful implementation could create a bandwagon effect, encouraging others to join. A third requirement is that there should be a clear idea of the purpose and scope of the convention. It has to be carefully formulated in ways that specify the target (transnational criminal organizations and their members), the obligations that States incur (in terms of taking initiatives in their own national law, in positively responding to requests for assistance from others and in providing and exchanging information) and provisions for implementation (both procedural and substantive).

IV. OUTLINE OF POSSIBLE ELEMENTS FOR A NEW INTERNATIONAL INSTRUMENT

A. General principles

39. An internationally binding instrument, such as a convention, against transnational criminal organizations and their activities could first of all express concern about the threat posed by transnational criminal organizations and the urgent need for international cooperation to respond to a phenomenon endangering stability and security, the integrity of financial institutions, the international order, as well as the processes of democratization and development. Secondly, it could establish the principles underlying cooperation among countries in responding to transnational organized crime,* as well as emphasizing that existing instruments of cooperation would be integrated into the convention.

40. It would also be important to have a clear understanding of the characteristics of transnational organized crime, paying particular attention to its structural features and modus operandi. These could include, for instance, the following: the grouping together of a number of individuals; the profit-making goal; the use of violence, intimidation and corruption; the hierarchical link or personal relationships that make it possible to control closely the activities of the group; the economic control of whole territories; the laundering of illicit profits in order not only to organize other criminal activities but also to set up businesses (with the consequent effect of corrupting them); the great potential of expansion beyond national boundaries; and the tendency to organize international operations together with other groups of different nationalities.[12]

41. To enumerate all the crimes that these organizations commit would be almost impossible and the list would need to be constantly updated. Organized crime groups are opportunistic and become involved in all sorts of crimes, as long as they are profitable. These crimes do not qualify per se as organized crime activity. It would, nevertheless, be possible to draw up a non-exhaustive list of the criminal acts most frequently committed by organized criminal groups operating across national borders, such as: the theft of cultural property; trafficking in arms; illegal gambling; smuggling of illegal migrants; trafficking in women and children for sexual slavery; extortion; violence against the judiciary and journalists; corruption of government and public officials; trafficking in radioactive material; illicit infiltration of licit business; trafficking in body parts; trafficking in endangered species; transnational auto-theft; money-laundering; computer-related crimes; and international fraud. Crimes such as drug trafficking and piracy, which are already the object of specific conventions, would be purposely excluded.

42. There should also be general principles related to modalities of cooperation. For example, the need to respond with as much diligence and as many resources as possible, within the limits of overall constraints on resources and the other demands on national policy, to the growth in transnational crime and the emergence of transnational criminal organizations as the major perpetrators of these crimes. Another general principle could be that States should take action unilaterally and in cooperation with each other to fight against transnational crime and to disrupt, dismantle and destroy the transnational organizations commonly engaging in these activities. In addition, it could be established that efforts to

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*These principles are identified in the background documents on the most effective forms of international cooperation for the prevention and control of organized transnational crime at the investigative, prosecutorial and judicial levels (E/CONF.88/4) and on appropriate modalities and guidelines for the prevention and control of organized transnational crime at the regional and international levels (E/CONF.88/5).

implement national initiatives and international cooperation against transnational criminal organizations should be consistent with - or governed by - respect for human rights.

B. Specific provisions

43. Some or all of the following specific and detailed provisions should be included in the instrument:

(a) Serious efforts should be made to develop both substantive and procedural national legislation against transnational criminal organizations and their activities, in convergence with the legislation of other signatories;

(b) All available arrangements of international cooperation against transnational criminal activities should be used and existing measures at the regional level implemented on a larger scale;

(c) Regulatory measures and administrative regulations should be developed that would make the commercial and banking sectors more transparent and accountable and therefore less susceptible to infiltration by transnational criminal organizations;

(d) Concerted action should be taken against money-laundering* and the use of the proceeds of crime, including pressure on tax havens to tighten up their procedures and to cooperate in developing a higher level of transparency;

(e) Countries should assist each other by providing the persons, evidence and assets that are requested by a party to the convention, according to the principles contained in the United Nations Model Treaties on Extradition, on Mutual Assistance in Criminal Matters (including its Optional Protocol concerning the proceeds of crime) and on the Transfer of Proceeding in Criminal Matters;**

(f) Uniform and effective techniques of investigation and prosecution should be developed against transnational criminal organizations, including more sophisticated means of information-gathering, collection of evidence and analysis of financial flows and/or investigation of suspicious transactions and

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*Among the most relevant measures against money laundering taken at the regional and international levels are the following: the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, adopted at Vienna on 19 December 1988 (E/CONF.82/15 and Corr.2); the 40 recommendations of the Financial Action Task Force of the Group of Seven, adopted in 1990; the 21 recommendations of the Caribbean Financial Action Task Force, adopted at Aruba on 10 June 1990; the Council of Europe Convention on Laundering, Search and Confiscation of the Proceeds from Crime, adopted in Strasbourg on 8 November 1990 (European Treaty Series No. 141); the Council of the European Communities Directive on the Prevention of the Use of the Financial System for the Purpose of Money Laundering, adopted on 10 June 1991 (91/308/EEC); and the Inter-American Drug Abuse Control Commission (CICAD) Model Regulations concerning Laundering Offenses connected to Illicit Drug Trafficking and Related Offenses, adopted by CICAD in March 1992 and by the Organization of American States General Assembly in June 1992 (OEA/Ser.L/XIV.2;CICAD/INF.58/92).

**See the annexes to General Assembly resolutions 45/116, 45/117 and 45/118. The Crime Prevention and Criminal Justice Branch is preparing manuals providing guidelines on how to implement these Model Treaties. For the advantages of using such instruments see the report of the Secretary-General on the most effective forms of international cooperation for the prevention and control of organized transnational crime at the investigative, prosecutorial and judicial levels (E/CONF.88/4).

specialized national investigative units should be set up to deal specifically with organized crime (E/CONF.88/4, paras. 19-24 and 29);

(g) Information should be exchanged in order to assist other signatories in the investigation, apprehension and prosecution of those engaged in transnational crime;

(h) Requests for judicial and other forms of technical assistance should be given a positive response, with a view to strengthening national criminal justice and law enforcement systems against transnational criminal organizations;

(i) Modalities should be considered to encourage States to implement the convention fully;

(j) Collective measures should be taken to ensure that there are no safe havens, and to avoid either tacit support for, or collusion with, transnational criminal organizations.

44. As regards judicial assistance, the State parties to the convention should try to ensure that assistance is provided in the most efficient and cost-effective ways. It would be useful, for example, to develop a central clearing-house for information on legislative and other measures taken at the national level, their effectiveness and shortcomings. Furthermore, meetings of the States parties held periodically at a senior political level would play a key role in the search for donors to provide developing countries and countries in transition with technology, especially in the area of computerization, high-speed data exchange and other forms of information technology. Efforts could also be made to coordinate training programmes to be conducted under the provisions of the convention.

45. Since the successful prosecution and adjudication of cases involving organized crime are hampered not only by the sophistication of this form of crime and by the fear of retribution for cooperating with the law enforcement agencies but also by divergent evidentiary rules in national laws, the convention could include standard guidelines in this field.[13]

46. The convention could also provide for the establishment, either at the national or the international levels, of special funds for economic compensation of victims of organized crime when compensation cannot be charged to the person responsible. Such funds would be partially subsidized by confiscated capital (Economic and Social Council resolution 1994/12, annex, para. 35).

47. The possibility could be foreseen of establishing international machinery to implement the convention. If necessary, similar machinery could also be established at the national level. The scope and ambitiousness of the machinery might vary, but it would probably include at least a designated point of contact for international cooperation under the terms of the convention.

48. State parties could also undertake to meet particular national reporting requirements for implementing the convention. In addition, they could be requested to produce annual assessments of trends in the development of transnational crime and transnational criminal organizations, calling upon outside specialists and national investigative bodies, as well as international agencies such as the International Criminal Police Organization (ICPO/Interpol). If resources permit, they could also engage in specific research analysis of particular areas of transnational crime.

49. The convention could establish a monitoring system, including provisions on periodic review and amendment procedures, to ensure that its provisions reflect changing patterns of transnational crime, as well as the reaction of transnational criminal organizations to international cooperation in criminal justice and law enforcement.

V. CONCLUSIONS

50. The international community is becoming increasingly concerned about the impact that transnational organized crime produces on national economies, international relations, stability, security and peace. The decisive action taken against this form of crime in many countries, as well as the attention devoted to it by the Commission on Crime Prevention and Criminal Justice and the legislative bodies of the United Nations, in particular the General Assembly and the Economic and Social Council, demonstrate that the issue is a major priority for Member States.[14]

51. The new responsibilities that Governments have to take on because of the escalation of organized crime and the demand for global strategies to combat it, draw attention to the need for effective instruments, bearing in mind that what is most needed is a comprehensive, multi-layered approach to international cooperation in criminal justice and law enforcement in the fight against transnational organized crime. Ideally, a truly effective international approach would be composed of a web of bilateral, regional and multilateral agreements complementing and promoting one another. In fact, bilateral and multilateral forms of cooperation are complementary rather than mutually exclusive, but whether international cooperation can evolve in ways that allow a response to transnational criminal organizations commensurate with the threat depends on the capacity of States to understand that criminal justice and law enforcement systems can no longer be viewed as purely national concerns. Ultimately the prospects for cooperation depend on recognizing that a new kind of threat demands a new kind of response, in which international cooperation plays a central role. Experience has shown the importance of adopting international instruments in order to enact global strategies of action when dealing with issues of a transnational nature. A very successful example is found in the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988 (E/CONF.82/15 and Corr.2).

52. International cooperation is easier today than it was a few years ago. In fact, today there is a growing realization that States can only tackle the new forms and dimensions of crime effectively if they join forces. Many countries have explicitly recognized that they do not have sufficient capacity to face the new transnational forms of crime, particularly organized and economic crime, including corruption and money-laundering, environmental offences and increasing violence. The lack of qualified staff is a prevalent problem, and the training of criminal justice personnel a widely declared priority. There is a pressing need for expertise to deal with sophisticated new forms of criminality and for specialized personnel to handle criminal investigations and prosecutions. There have been requests for assistance in drafting legislation, in procuring equipment to enhance law enforcement capabilities, and in developing and applying bilateral or multilateral treaties and agreements.

53. There is also a growing awareness that the limited capabilities of many developing countries have been further taxed by the increasing demands on their criminal justice systems. They often operate under outdated legislation and imported procedures that are ill-suited to their conditions and the contemporary realities of crime. Economic crises and competing development priorities have worsened the crime problems in many countries, with serious effects on their law enforcement capacities. Furthermore, in countries in transition from a single-party to a multiparty political system, where protection of the State was formerly paramount, there is a move to institutionalize the observance of human rights and strike a balance between effective crime control and democratic principles. The goal of these countries is to ensure judicial independence to allow greater flexibility and build public confidence in the administration of justice. Since, however, the role and operation of the criminal justice system , including the police, prosecution, legal defence, courts and prisons, are in a process of change, organized crime finds fertile ground for expanding its activities.

54. A fundamental purpose of international cooperation is to contribute to the creation of self-reliant capacities in developing countries, as well as countries in transition. Strengthened technical cooperation in the fight against transnational organized crime should be viewed as a contribution to this end. Programme activities should be geared to developing expertise, especially in countries where it is scarce, and to promoting the highest standards of professionalism and specialization. Training and upgrading the skills of personnel working in the various areas of criminal justice is considered crucial. Adequate support of Member Sates in this field would require that appropriate expertise be identified and material developed that would cater to the specific requirements of each region or each group of trainees. Furthermore, effective channels of communication are necessary in order to assess needs and prevailing circumstances, in order to tailor training activities to these needs.

55. While most technical cooperation activities rely on voluntary contributions from Member States and funding agencies, the infrastructure for elaborating proposals, assessing needs, organizing and implementing projects and providing administrative support and the required follow-up should be developed and built into the basic framework of any global strategy. The new post-cold-war framework of international relations is relatively free of the impediments of the past that resulted from narrow political considerations. In this favourable environment, with the international community sharing the same values, the Conference represents the appropriate forum for Member States to express all the commitment, political will and unwavering determination that are necessary to strengthen multilateral cooperation, taking global action against transnational organized crime a step further,with concrete and practical measures for implementation.[15]

Notes

[1]Rainer Schmidt-Nothen, "Der lange Marsch durch viele Konferenzen. Es gibt noch viel zu tun: Vertraege und Abkommen, die dem Kampf gegen das verbrechen dienen' [The long march through many conferences. There is still much to be done: treaties and agreements supporting the fight against crime], Kriminalistik, vol. 41, (1987), pp. 8-9.

[2]Richard A. Martin, "Problems in international law enforcement", Fordham International Law Journal, vol. 14, No. 3 (1990-1991), p.521.

[3]Ibid. p. 522.

[4]See Fleur Keyser-Ringnalda, "European integration with regard to the confiscation of the proceeds of crime", paper compiled for the Tenth International Symposium on Economic Crime, Cambridge, July 1992.

[5]See Reuters, 1993, "Italy: Mafia looks forward to Europe without frontiers", CJ Europe, vol. 3, No. 1 (January-February), p. 15.

[6]See Bruce Zagaris and Sheila Castilla, "Implementation of a worldwide anti-money laundering system: constructing an international financial regime" (Police Executive Research Forum, Washington, July 1993).

[7]European Treaty Series No. 141 (1990).

[8]Model regulations concerning laundering offences connected to illicit drug trafficking and related offences, adopted at the eleventh regular session of the Inter-American Drug Abuse Commission, held at Punta del Este from 10 to 13 March 1992.

[9]See Cyrille Fijnaut, "Policing Western Europe: Interpol, TREVI and Europol", Police Studies, vol. 15, No. 3, pp. 101-106, and H. F. Markus Mohler, "A proposal for a European security space", CJ Europe, vol. 1, No. 1.

[10]Ethan A. Nadelmann, Cops Across Borders (University Park, Pennsylvania, Pennsylvania State University Press, 1993), p. 9.

[11]See Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August-7 September, 1990: Report Prepared by the Secretariat (United Nations publication, Sales No. E.91.IV.2), chap. IV, sect. C, para. 253.

[12]Discussion document on the World Ministerial Conference on organized transnational crime (Economic and Social Council resolution 1994/12, annex) para. 9.

[13]Official Records of the Economic and Social Council, 1994, Supplement No. 11 (E/1994/31), chap. II, para. 25.

[14]See General Assembly resolutions 44/71, 45/116, 45/117, 45/118, 45/119, 45/121, 46/152, 47/87, 48/102 and 48/103, and Economic and Social Council resolutions 1989/62, 1989/70, 1992/22 of 30 July 1992, 1993/29, 1993/30 and 1994/12.

[15]See the report of the Secretary-General on the status of preparation of the World Ministerial Conference on Organized Transnational Crime (E/CN.15/1994/4/Add.3), paras. 26-27.